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Guidelines for Implementing **Asset Recycling** Transactions

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Using the Guidelines:

The Guidelines in Implementing Asset Recycling Transactions (Guidelines) have not been prepared with any specific transaction in mind and are meant to serve only as general guidance. It is therefore critical that the Guidelines be reviewed and adapted for specific transactions.

The contents of the Guidelines are outlined on the Contents page. Click on the topic/title or scroll through the pdf to find the corresponding section. To go back to the outline, click through the Back to Contents link located at bottom portion of the pages.

The Guidelines are also available in web format at the Public-Private Partnership Legal Resource Center (PPPLRC). Find the latest version online at https://ppp.worldbank.org/public-private-partnership/Asset_Recycling or by clicking on the links (text in blue) that you will find on the pages this report.

Read the accompanying [Annex](#) for more sector specific samples, templates, and references.

For [feedback](#) or suggestions, please contact the PPPLRC at ppp@worldbank.org.



Guidelines for Implementing
Asset Recycling
Transactions

(Concession and Lease Models)

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Executive Summary

Governments around the world are increasingly looking at improving the quality of infrastructure and delivering improved services to the community. Infrastructure investment is crucial to the ongoing economic prosperity and development of any country. For most countries, to meet the substantial infrastructure investment capital needed to fund an infrastructure program, there is a need to unlock multiple sources of funding to ensure that current developmental momentum can be sustained.

This is in line with the commitment of Governments under the Paris Agreement's ambitious target to protect and sustain ecosystems addressing climate change adaptation and mitigation as well as achieving the Sustainable Development Goals (SDGs), by fostering sustainable infrastructure solutions that deliver low-carbon development pathways.

Infrastructure is pivotal to sustainable development with positive impacts on the economy, environment and society if implemented correctly. Each piece of infrastructure asset should not be viewed on a standalone basis (such as a power plant, an airport, a road, or a water facility), but as part of an ecosystem comprising of a portfolio of assets that collectively support the SDGs.

Given the fiscal constraints and higher upfront costs associated for developing low-carbon infrastructure and transitioning away from carbon-intensive infrastructure, public budget alone will be insufficient to fully fund the infrastructure needs. The COVID-19 pandemic has seen severe pressure on public budgets as governments have re-directed the resources to address the fall out of the pandemic.

Given so, governments must find alternative sources of funding for infrastructure investments; a well-implemented asset recycling program presents as an option to monetize invested capital to meet the infrastructure development needs.

There is no definitive model for asset recycling of public infrastructure assets. In general, it involves private investment in existing SOE assets. It may involve, for example, government funding new assets or redeveloping existing assets or repaying existing debt by using the proceeds realised from the grant of concessions, a sale or lease or structured financing of existing infrastructure assets.

For example, in an asset recycling transaction using a concession model, the private sector counterparty pays to government an up-front payment to secure the operating rights of the infrastructure asset. Over the term of the concession, the ownership of the asset generally remains vested in the government. The private sector party bears the responsibilities for the maintenance and operations of the asset in exchange for the revenues generated from users of the asset.

Assets that are most viable for recycling are brownfield assets that have an established stream of revenue, such as toll roads, airports, and utilities assets and which design, development and construction risks have been substantially removed. The upfront payment realised under an asset recycling transaction is applied to fund new infrastructure projects or redeveloping existing assets or repaying existing debt.

The range of models that have been observed in asset recycling transactions include the following:

Table 1: Models of Asset Recycling

Models of Asset Recycling (Monetization)
<p>Concession Model <i>(Build-operate-transfer, rehabilitate-operate-transfer, service/ maintenance contract)</i></p>
<ul style="list-style-type: none"> • Definition: A concession model is an arrangement that typically involves a private sector entity operating and maintaining an infrastructure asset to provide the public service for a specified period, against payment of an upfront fee and/ or annual fee. In an asset recycling transaction, the asset would already be fully operational and would not require any significant development capital on the part of the private sector entity (However, it is noted that for some projects, the private sector entity may be required to upgrade or expand the asset). • Parties to the agreement: The parties to a concession agreement would include a public sector entity, such as central governmental bodies or state-owned entities (the Relevant Authority), and a private sector entity to which the responsibility for the service has been delegated. • Use of assets: The use of assets is determined by the Relevant Authority by defining the performance requirements in the agreement. The relevant authority or grantor may also regulate the prices and changes in prices to be charged to users. • Hand back of assets: The private sector entity is required to hand-over the infrastructure asset to the grantor/ Relevant Authority in a specified condition at the end of the concession period.
<p>Lease Model</p>
<ul style="list-style-type: none"> • Definition: Under an asset recycling scheme, a lease confers the right to use an asset (the underlying asset) for a period in exchange for the private sector entity making an upfront and/or annual lease payment. • Parties to the agreement: In the context of an asset recycling transaction, a Relevant Authority will act as the lessor; with the private sector as the lessee to the lease agreement. • Use of assets: The terms of the lease agreement will set out the obligations, responsibilities of the lessor (Relevant Authority) and lessee in regard to the use of assets and regulate the lease payments. • Returning the assets: The use of the asset is returned to the Relevant Authority at the end of the lease term.
<p>Joint Venture (JVC) Model</p>
<ul style="list-style-type: none"> • In a JVC model, the Relevant Authority and the selected private sector investor(s) enter into a joint venture to jointly operate the asset under a long-term lease or concession.
<p>Structured Financing</p>
<p><i>Securitization</i></p>
<ul style="list-style-type: none"> • Securitisation refers to transformation of a pool of illiquid financial assets (for example, lease receivables for a portfolio of aircraft or toll revenues derived from a toll way) into investible liquid financial assets: referred to as asset backed securities. • Financial assets that have a stable or predictable cash flow (such as leases from real estate, toll or tariff revenue from infrastructure facilities such as toll roads or ports) can be securitised. In the context of a Relevant Authority as an originator, securitisation enables the Relevant Authority to sell pools of receivables that it derives to institutional investors to generate funding for new investments; thereby recycling capital.

Infrastructure Investment Trusts (InvITs)

- InvITs are business trusts, registered with the market regulator, which owns, operates, and manages brownfield, operational infrastructure assets. These long-term revenue-generating infrastructure assets generate cash flows which are distributed to the unitholders periodically.

Out-right sale model/ partial divestment

Out-right sale model

- An outright sale involves selling the rights and ownership of the asset to the private sector for an upfront lump sum payment.

Partial divestment

- A partial divestment involves selling partial rights and ownership of the asset to the private sector for an upfront lump sum payment.

Asset recycling offers the opportunity to fund needed infrastructure without the government taking on additional public sector debt. Further, it allows private sector participation in the operation of the assets that can lead to operational efficiencies and improve existing infrastructure service delivery.

This set of Asset Recycling Guidelines have been developed to support governments in selecting, preparing, and delivering asset recycling transactions, with a focus on long-term concession and lease models only. The Guidelines have been drafted to provide a systematic and consistent approach to facilitate asset recycling transactions under these models.

The Guidelines have not been prepared with any specific transaction in mind and are meant to serve only as general guidance. It is therefore critical that the Guidelines be reviewed and adapted for specific transactions.

Box 1: Case Study on Asset Recycling Initiative in Australia

Case Study: Asset Recycling Initiative (ARI), Australia¹

Australia has explored and implemented asset recycling concept with Asset Recycling Initiative (ARI). The initiative provides an incentive to the states to engage in asset recycling to boost infrastructure development.

Participating states and territories agreed with the Federal Government as to which assets would be monetized, and the infrastructure assets to be developed from the proceeds.

Following a successful asset recycling transaction undertaken by a state, and on the utilization of the proceeds to invest in new infrastructure, the participating state (or territory) receives an additional 15 percent of the monetized proceeds from the Federal Government.

The Federal Government's financial contribution is managed through the Asset Recycling Fund (ARF), which is used to make payments to states.

Case Study: National Monetization Pipeline (NMP), India²

The Government of India launched the asset monetisation pipeline, 'National Monetisation Pipeline (NMP Volumes 1 and 2)', in consultation with infrastructure line ministries, based on the mandate for 'Asset Monetisation' under Union Budget 2021-22.

Asset monetisation, based on the philosophy of "Creation through Monetisation", is aimed at tapping private sector investment in new infrastructure. In India, the framework of core asset monetisation has three key imperatives:

- Monetization of 'rights' not 'ownership'; assets are handed back to the government at the end of concession.
- Brownfield de-risked assets, with stable revenue streams, are the primary candidates of monetization.
- Structured partnerships, under defined contractual frameworks with strict KPIs and performance standards, are encouraged to increase operational efficiencies of infrastructure assets to be monetized.

Case Study: Limited Concession Scheme, Indonesia³

In February 2020, the Government of Indonesia introduced a new legal framework of the Limited Concession Scheme (LCS) to monetize infrastructure assets owned by the Government and State-owned Enterprises (SOE).

Under this scheme, the relevant authority is to grant a long-term concession to a private sector party to operate the asset and in return, Government receives an upfront payment that is to be applied to developing new infrastructure assets.

The LCS is not equivalent to privatization as the ownership of the asset remains with the Government, and the private sector party is conferred with the right to operate the asset for the concession term.

¹ <https://www.oliverwyman.com/our-expertise/insights/2018/jul/infrastructure-asset-recycling-insights-for-governments-and-investors.html>

² <https://www.india.gov.in/spotlight/national-monetisation-pipeline-nmp>

³ <https://www.allenoverly.com/en-gb/global/news-and-insights/publications/new-concession-model-introduced-to-monetise-existing-government-soe-infrastructure-assets>

Structure of Guidelines

This document provides a set of step-by-step guidelines (the Guidelines) for relevant authorities to monetize existing assets by recycling them through long-term concession or lease arrangements. The development of the Guidelines has been informed by best practices gleaned from programs implemented by various countries.

The Guidelines are structured as follows:

- **Section 3** sets out the Asset Selection Process which a Relevant Authority should undertake in the selection of an appropriate asset for the purposes of an asset recycling transaction.
- **Section 4** sets out the Project Preparation Process, which includes the selection of transaction advisors, the due diligence process, project structuring and market sounding activities.
- **Section 5** sets out the Tendering Process for the asset recycling transaction, from procurement to bid award and contract finalization.
- **Section 6** sets out financing options and instruments available for asset recycling transactions.
- **Section 7** sets out the Contract Management process post contract award; this includes guidelines for developing the contract management plan, monitoring and reporting, and dispute resolution mechanism.
- **Section 8** sets out mechanisms for the use of proceeds raised from an asset recycling transaction based on international best practices.

The Guidelines are also supplemented with following Annex:

- **Module 1 to 4** set out sector-specific asset recycling guidelines for [airports](#), [power](#), [roads](#), and [ports](#) sectors, including sector-specific due diligence requirements, sample risk allocation matrix and sample terms of reference (TOR) for selection of transaction advisors.
- **Module 5** sets out a template for term sheet for a typical concession/ lease model for an asset recycling transaction.
- **Module 6** sets out the range of bid parameters for a typical concession/ lease model for an asset recycling transaction.
- **Module 7** sets out the bundling and unbundling criteria for assets considered for asset recycling transaction.
- **Module 8** sets out the details of climate finance as a financing option for asset recycling transactions.
- **Module 9** sets out the details of Islamic finance as a financing option for asset recycling transactions.
- **Module 10** sets out the governance requirements of a project company (JV) for asset recycling transaction.

Guidelines for Asset Identification

Asset Selection Process

In selecting an appropriate asset as the subject of an asset recycling transaction, the Relevant Authority should consider five (5) key parameters; being (i) operational, (ii) financial/ commercial checks, (iii) legal and regulatory, (iv) early-stage market testing, and (v) and social and environmental. Against each parameter, the Relevant Authority should apply the relevant checks as set out below:

Operational Checks

The Relevant Authority should check the following from an operational perspective:

The asset should meet the following criteria:

- Historical operations - the asset should be already operational to enable an assessment of its operational and financial track record.
- Remaining life - the asset should have an adequate remaining life to ensure that the private sector can generate sufficient return on its investment. In addition, the remaining life of the asset may also be impacted by climate related risks that may shorten its effective life.
- Scope for operational efficiencies - scope for improvement or innovation by the private sector partner in terms of operational efficiency or effectiveness (including those related to energy consumption).
- Climate risks - The Relevant Authority should assess how climate risks may affect the potential asset recycling transaction. If left unmitigated, the adverse effects of climate change may impact the operational, financial, environmental, and social performance of large, fixed infrastructure assets. The climate risk assessment at this stage can be considered on the basis of a high-level assessment, or 'screening' of the risks compared to the preliminary technical, economic, and financial assessments conducted. An asset recycling transaction with high climate risk might be determined as too risky. The following high-level assessment are recommended as an initial assessment of an asset recycling transaction, prior to making further investment in acquiring permits or conducting more in-depth assessments:
 - Screening-level assessment of climate-related risk exposure;
 - Screening-level assessment of project vulnerability; and
 - Screening-level assessment of the overall climate risk profile: assessment of GHG emissions baseline of the asset.

Financial/ Commercial Checks

The following commercial and financial reviews should be considered to determine if an asset has the potential to be recycled.

The key factors to consider are:

- Historical cashflows: the asset should be supported by positive historical cash flows.

- Revenue generating potential: the asset should, over the remaining life assessed based on the demand forecast, tariff setting and the impact of government policies, be able to generate positive cashflow for the private sector party.
- Sustainability of debt serviceability: the revenue generated by the asset, depending on leverage used to finance its investment, should be able to service debt obligations.
- Capital generation: ability to generate sufficient funds from an upfront fee, periodic payments by the private partner, shared profits or dividends, or other revenue sharing modalities.

Legal and Regulatory Checks

The following checks should be undertaken on the asset:

- Legal compliance: full compliance with applicable regulatory requirements; if not, the transaction preparation will require the remediation of any non-compliance.
- Litigations and claims: not subject to any current or threatened disputes, claims or other legal liabilities, such as, disputed land ownership or associated arrears, history of adverse environmental impacts and associated liabilities, as this will likely raise concerns from potential investors and adversely impact the attractiveness of the transaction to the market.
- Other legal risks identification: The Relevant Authority should review legal risks which may affect the asset and transaction including required licences for the private sector to hold and operate the asset, if applicable, and any existing rights applicable to the transfer or assignment of material agreements; transfer of staff.

Early-Stage Market Testing

While a detailed market sounding should be undertaken during the transaction phase of the asset recycling transaction, early-stage market interest should also be conducted to shape the potential transaction. This may assess the level of market interest in asset recycling transactions and test broader issues:

- Market interest in the specific asset class: The Relevant Authority should assess if the asset appeals to the private sector investor community through a market testing exercise; and
- Investor class: The range of potential private sector participants in asset recycling transactions would include strategic, financial, institutional investors. The Relevant Authority should seek input from these parties, such as their specific investment criteria including return expectation, tolerance for certain risks (such as revenue transfer), preferred project structures, etc.

The feedback from the market can be used to support the decision if the particular asset should be the subject of an asset recycling transaction. Input from the market can also help inform whether further analysis may be needed as part of the preparation for the transaction.

Social and Environmental Checks

In addition to the above, social, and environmental due diligence and considerations, and corresponding mitigation measures should also be taken into consideration in the asset selection process. These should include consideration of matters relating to environmental as well as social impacts such as relocation of communities and/or employee retrenchment.

Box 2: Case Studies from India and Indonesia

Case Study: Asset selection for toll-operate-transfer (TOT) model of road asset monetization, India⁴

The selection of assets is based on asset's track record of exhibiting certainty in toll generation. As the assets are operating, concessionaires do not bear any developmental and construction risks.

Accordingly, the assets should (i) be operational with observable traffic demand and be supported by (ii) reliable traffic forecast with (iii) substantial capital expenditure already incurred thereby de-risking the concession from development and construction risks.

As per the latest guidelines, the public funded highway projects which are operational and have toll revenue generation history of one (1) year after the commercial operations date shall be monetized through TOT model.

Case Study: Asset selection for Limited Concession Scheme (LCS), Indonesia⁵

As per the regulation on LCS, assets belonging to the State, and assets belonging to State-owned enterprises (SOEs) are eligible for monetization. These include infrastructure assets such as transportation assets (seaports, airports, railways, and bus terminals), toll roads, water/drinking water, sewerage and waste management systems, telecommunications assets and energy (power/renewables, oil and gas).

The LCS Assets must satisfy criteria set out in the regulation:

- the assets have operated for at least two years.
- the assets require operational efficiency.
- the life of the assets is at least ten years.
- the assets have a track record of positive cash flow for at least two (2) consecutive years.

⁴ <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1592544>

⁵ <https://www.allenoverly.com/en-gb/global/news-and-insights/publications/new-concession-model-introduced-to-monetise-existing-government-soe-infrastructure-assets>

Project Preparation

Project Preparation Overview

At the project preparation stage, the Relevant Authority should conduct the following activities:

- Recruit and engage advisors, including financial, technical, legal, and other advisors (such as, accounting and taxation, and environmental and social).
- Conduct asset due diligence, including technical, commercial, financial, environmental, social, legal and accounting, and tax due diligence.
- Develop the transaction structure, including an evaluation of ownership models and developing the risk allocation and commercial principles; and
- Conduct market sounding exercise.

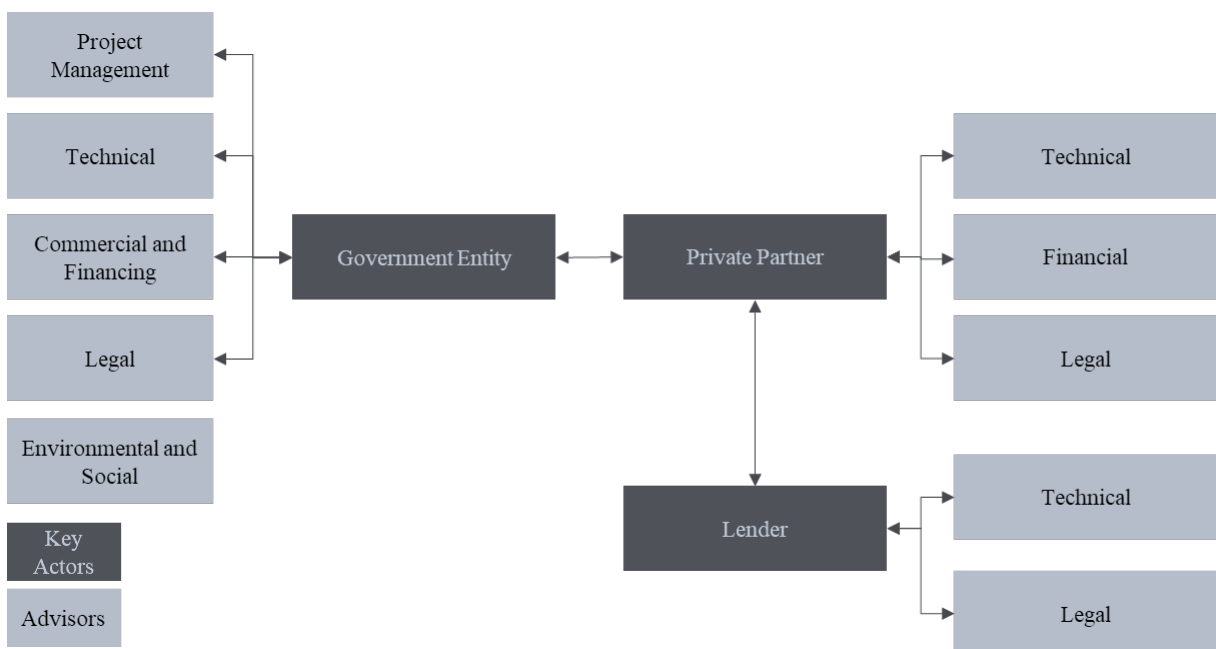
Engaging Advisors

Advisors should be engaged for the preparation and bidding phases of an asset recycling transaction. The team of transaction advisors would typically consist of a lead transaction/financial advisor, supported by technical and legal advisors.

Other specialists such as environmental expert, social expert and insurance, accounting and tax advisors may also be appointed depending on the asset(s) and the transaction.

Advisory Services for an Asset Recycling Project

Figure 1: Advisory Services for an Asset Recycling Project



The engagement of advisors should consider three considerations: (i) Setting up a coherent multidisciplinary team, (ii) ensuring independent advice and (iii) value for money in engaging the advisory services. Key aspects that should be considered are:

Selection of advisors

- Terms of reference should set out the context and objectives of the transaction, how the transaction is to be managed, the role of the advisor, and the required deliverables and deadlines.
- Scope of work should be clear, specific, and time-bound and should not be open-ended.
- The size requirements of the advisor's team over the transaction phases should be carefully considered. The team may need to scale up or down to adapt to the workload over the transaction phases.
- Asset-recycling and sectoral experience should be an important selection criterion and should be evidenced by a credible set of credentials.
- Evaluation should focus on the skills of the nominated individuals and the firm. The quality of an assignment depends on the quality of the people involved. The firm's reputation and track-record of relevant mandates and the credentials of the individuals proposed should also be carefully considered.
- There should be sufficient flexibility to allow for contingencies such as extension of scope or time in delivering the transaction.
- In evaluating the potential advisers, the Relevant Authority should ensure a balanced approach in evaluation to ensure that sufficient consideration is given to the track record and ability of the adviser so that the lowest price proposition is not always favored.

Structuring advisor's contract

The Relevant Authority should determine if advisors should be engaged through an integrated contract or separate contracts. The decision must be taken case by case by considering (i) the local advisory market (ii) resources available within the Relevant Authority to manage the transaction and (iii) the features and complexity of the proposed transaction. Description of the procurement models are provided below:

- Integrated contract – A single procurement procedure is launched to appoint a consortium of advisors.
 - This presents a more streamlined approach to the Relevant Authority; requiring less involvement in coordinating separate advisors and should have lower interface risks amongst the various advisors. The head or lead contractor will be responsible for coordinating the inputs and deliverables under such a contract.
 - A disadvantage is that the Relevant Authority may not be able to engage the best advisor in each respective field as the consultancy team determines the make-up of the advisory team. This can be mitigated by Relevant Authority setting clear criteria and the skills required for selection and for each specific advisor.
- Separate contract – Procurement procedure is launched for each advisor required for the project. This will require the management of different sets of advisers if there is no project management firm or lead advisor appointed.

- Given separate contracting required, the procurement and the contracting processes may require more resources and time.
- A disadvantage is that Relevant Authority may not be able to leverage the synergies among the advisors.
- The government entity will need to not only manage various advisors, but also integrate advice from the separate workstreams. This may be the responsibility of the Relevant Authority, or it may need to appoint one of the advisors (typically the financial advisor) to do so (for a fee).
- Mixed – It is possible to use a mixed approach by mandating a separate contract for a specific advisor, for example where a specific workstream is very critical or where availability of good advisors seem rather limited and appoint the others as a consortium.

Optimum length of advisory contracts

The advisor’s terms of engagement should include (i) the phase covering due diligence, the preparation of business case and advising on the optimal asset recycling project structure, (ii) the procurement phase including the preparation of the tender documents, the running of the bid process and evaluation of bids, (iii) negotiations with the preferred bidder and up to contract and financial close, and (iv) preparation of contract management plan, including reporting requirements and training workshops for the Relevant Authority to build capacity on monitoring performance and contract administration.

Payment structure

The fees should provide effective incentives for the advisors to meet the Relevant Authority’s objectives for the transaction. Advisors should be remunerated based on delivering the prescribed work packages that cover identifiable phases of the project’s development with remuneration commensurate with effort and complexity of the transaction. There should be some flexibility that allows the Relevant Authority to implement some changes in scope and extensions.

Key Elements in Drafting Terms of Reference

The following key elements in drafting the terms of reference for the advisors should be considered:

Table 2: Key Elements in Drafting Terms of Reference

Category	Scope/ Terms of Reference
Lead Transaction Advisor/ Financial Advisor	<ul style="list-style-type: none"> ● Assist Relevant Authority in the coordination of all advisors and manage interfaces between government officials and other advisors. ● Support development of the financial aspects of the transaction - appraisal of different transaction options, financial modelling, and inputs on bankability and financial advisory. ● Determine and develop the requirements for submitting a financial bid. ● Ensure that financial aspects of the bidders' solutions meet the requirements for submitting a financial bid. ● Review financial models submitted by bidders and advise of risks.

Category	Scope/ Terms of Reference
	<ul style="list-style-type: none"> • Evaluate and advise on all financial proposals. • Review the funding, accounting, and taxation aspects of solutions proposed by bidders to ensure deliverability. • Undertake financial due diligence on bids submitted. • Preparation of implementation guidelines to help the Relevant Authority operations team implement the transaction in accordance with the agreement. • Identify and evaluate other sources of funding (including, project finance, climate finance, or Islamic finance) for the asset/ related projects or for use of proceeds resulting from the asset/ related projects.
Technical Advisor	<ul style="list-style-type: none"> • Support the development of the technical aspects of the transaction, including scope of the private sector’s responsibility with respect to the asset. • Draft the asset/transaction’s performance specifications (and if required any capital investment that may be required). • Evaluate and advise on technical solutions over the tender phase, including matters relating to labour, maintenance regime and lifecycle renewal. • Undertake technical due diligence on bidders' solutions particularly with respect to asset maintenance and operations, asset management and lifecycle refurbishments. • Assess bidders’ technical proposal and advise on deliverability in terms of meeting proposed contracted performance requirements. • Provide support in the clarification and refinement of technical issues with preferred bidder/s. • Preparation of implementation guidelines to help Relevant Authority operations team monitor the project in accordance with the agreement.
Legal Advisor	<ul style="list-style-type: none"> • Assist Relevant Authority in assessing the requisite powers and legal feasibility of the transaction. • Develop the contract documentation for the transaction. • Develop other legal aspects of bid documents, including analysis of the asset/s, land ownership, interface agreements, and other site-related issues. • Identify all legal and regulatory approvals that would be required for the transaction and lead preparation of all documents required to support securing these approvals. • Ensure that bids meet legal and contractual requirements. • Evaluate and advise on all processes and legal and contractual solutions throughout the procurement phase and minimize the risk of bid challenge. • Undertake legal due diligence on bids. • Provide support in the clarification and fine-tuning of legal aspects of the transaction. • Preparation of implementation guidelines to help the Relevant Authority operations team implement the project in accordance with the transaction agreements.

Category	Scope/ Terms of Reference
Accounting/ tax Advisor	<ul style="list-style-type: none"> • Provide advice with respect to tax and accounting implications of the transaction. • Assess tax and accounting treatment of the transaction to the Relevant Authority and review any associated risks.
Environmental and Climate Resilience	<ul style="list-style-type: none"> • Determine the GHG emissions baseline of the asset. • Assess bidders' technical solutions proposed in terms of their impact on future GHG emission pathways and climate resilience enhancement. • Identify climate-related risks, such as risks related to the physical impacts of climate change (Climate Change Physical Risks) and risks related to the transition to a lower-carbon economy (Climate Change Transition Risks). • Identify opportunities for enhancing the asset to become a sustainable asset or opportunities to use the proceeds in green, social, or sustainable projects.

Due Diligence Process

The Relevant Authority should conduct asset due diligence as part of the transaction preparation leading up to the asset recycling transaction.

The objectives of the due diligence process are to:

- Review of the asset to assess its physical condition.
- Review service standards provided under the current operations of the asset.
- Review the financial status of the asset and its financial feasibility if operated and managed by a private sector partner.
- Determine measures that can be implemented to enhance the asset's value through an asset recycling transaction, including any capital improvements (if required).

The Due Diligence process should cover technical, commercial, financial (including accounting and taxation), legal, environmental, and social review of the asset and the proposed transaction. A high-level checklist for this is provided below with detailed description for each respective component provided in subsequent sections.

Table 3: Asset Due Diligence Checklist

Asset Due Diligence Checklist	
Technical Due Diligence	<ul style="list-style-type: none"> • Technical data: Assess availability and accessibility of existing data for the asset. • Historical performance and asset condition: Assess the existing asset condition and service levels, including gap analysis of the service levels where efficiencies of the private sector can enhance asset performance or service delivery. • Capital and life-cycle expenditure plans: Based on the scope of improvements, identify future capital expenditure plans and impact on financial feasibility. • Operations: Assess operation costs for operations and maintenance of the asset and assess any areas for costs savings.

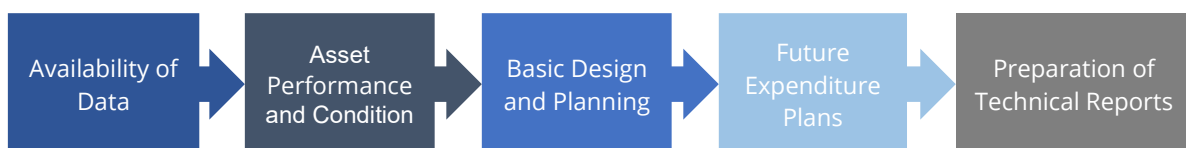
Asset Due Diligence Checklist	
	<ul style="list-style-type: none"> • Technical reports for bidders: Produce technical reports for the data room to inform bidders on key technical aspects of the asset.
Commercial Due Diligence	<ul style="list-style-type: none"> • Review historical demand/ traffic/ patronage. <ul style="list-style-type: none"> ○ Identify future demand/ traffic/ patronage trends. ○ Identify government policies and future developments that may impact demand in the near- to medium-term. • Undertake future forecast of demand and patronage. • Review adequacy and robustness of tariff policy, tariff setting mechanism, ensuring certainty over the project period. • Assessment of cost (capital and operating expenditure), including working capital requirements, for efficient capacity and operations of the asset. • Review current staffing and assess need for re-deployment or transfer to the private sector entity. • Review existing commercial principles (structure, payment mechanism, revenue model and risk allocation) between Government and the Relevant Authority and assess the need to modify for a private sector counterparty.
Financial Due Diligence	<ul style="list-style-type: none"> • Capital structure and debt serviceability: Assess the historical debt serviceability through project cash flows using appropriate metrics such as minimum DSCR; whether project cash flows are sufficient to support envisaged levels of debt if held by the private partner. • Profitability assessment in terms of operating profits (EBIT and EBITDA) and in terms of net income (pre- and post-tax). • Cashflow and return expectations: Determine the minimum equity IRR that the project is expected to generate - benchmark comparable projects and with private sector investors' expectations.
Legal and Regulatory Due Diligence	<ul style="list-style-type: none"> • Existing regulatory framework – review existing regulations and approvals to analyse any "gaps" and present solutions to resolve them (e.g., ability of private sector to operate, charge fees, collect revenues). • Agreements – review existing agreements (property and leases, customer revenue contracts, supply contracts, service agreements for assets or systems, offtake contracts) identifying risks and opportunities to improve value, such as exercising options or renewing near expired agreements. • Identify legal risks – future regulation of prices, issues employing workforce, transfer of contracts. • Legal Report for bidders – a report for the data room and successful bidder to rely on.
Accounting and Tax Due Diligence	<ul style="list-style-type: none"> • Undertake tax and accounting due diligence to assess implications for the Relevant Authority that is the asset owner and identify the attendant tax risks. • Ensure accounting treatment of asset recycling program is correctly booked for accounting purposes; and • Allow considerations to provide for efficient tax structuring.

Asset Due Diligence Checklist	
Environmental & Social Due Diligence	<ul style="list-style-type: none"> • Environmental and social impact assessment. • Historical performance and asset condition: Assessment of GHG emissions baseline of the Asset recycling, • Opportunities to increase efficiency and GHG emissions reductions), • Historical climate data and natural disaster events affecting the Asset. Also share hazard maps on earthquakes, floods, storm surges, tsunamis, landslides, and volcanic eruptions, among others, • Review of climate-related risks, natural disasters and environmental risks that may impact the Asset
Asset Valuation Methodology	<ul style="list-style-type: none"> • Appropriate techniques and methodology should be applied with respect to the nature, facts, circumstances of the asset and use of reasonable market data and technical assumptions. • Due to uncertainties inherent in estimating the fair value for the asset, care should be applied in exercising judgement and making the necessary estimates. • All available information that may materially impact the valuation should be factored in. • Proper assessment of quality and reliability of all the data used in valuation.

Technical Due Diligence

The objective of the technical due diligence is to identify potential technical issues with respect to the asset. This exercise should form the basis for determining the scope for management, maintenance, and refurbishment of the asset to ensure that required performance specifications can be met over the concession or lease term.

The Relevant Authority, supported by its technical advisors, should carry out the following steps in conducting technical due diligence of the asset:



Availability and accessibility of technical data:

- **Review relevant documentation:** Review available documentation of the asset, including but not limited to previous feasibility studies, technical reports (engineering drawing and design), financial statements, existing commercial agreements. Assess the completeness of data provided and, where warranted, commission additional studies.
- **Organization of data:** Data collected should then be organized according to categories - naming and categorization are required to minimize hurdles in accessibility by bidders when the data is to be made available during the bidding process.

Asset performance and condition:

The assessment includes a study on the existing asset condition:

Historical

- Undertake an assessment of the general condition of the asset.
- Identify any deficiencies in the asset's functions and operations.
- Assess annual operational and maintenance costs of the asset.
- Assess potential replacement / overhaul / major maintenance required.
- Assess remaining useful life of the asset.
- Assess overall performance (against benchmark KPIs – local and international) and capacity of the asset (and identify any constraints).

Future/ Forecast

- Define service specifications required to meet the future needs.
- Identify any change required in technology used and assess costs required for implementation.
- Assess if asset condition is sufficient to provide satisfactory service levels; document any gaps (gap analysis) where the efficiencies of the private sector can be leveraged.

Capital, operational and life-cycle expenditure plans:

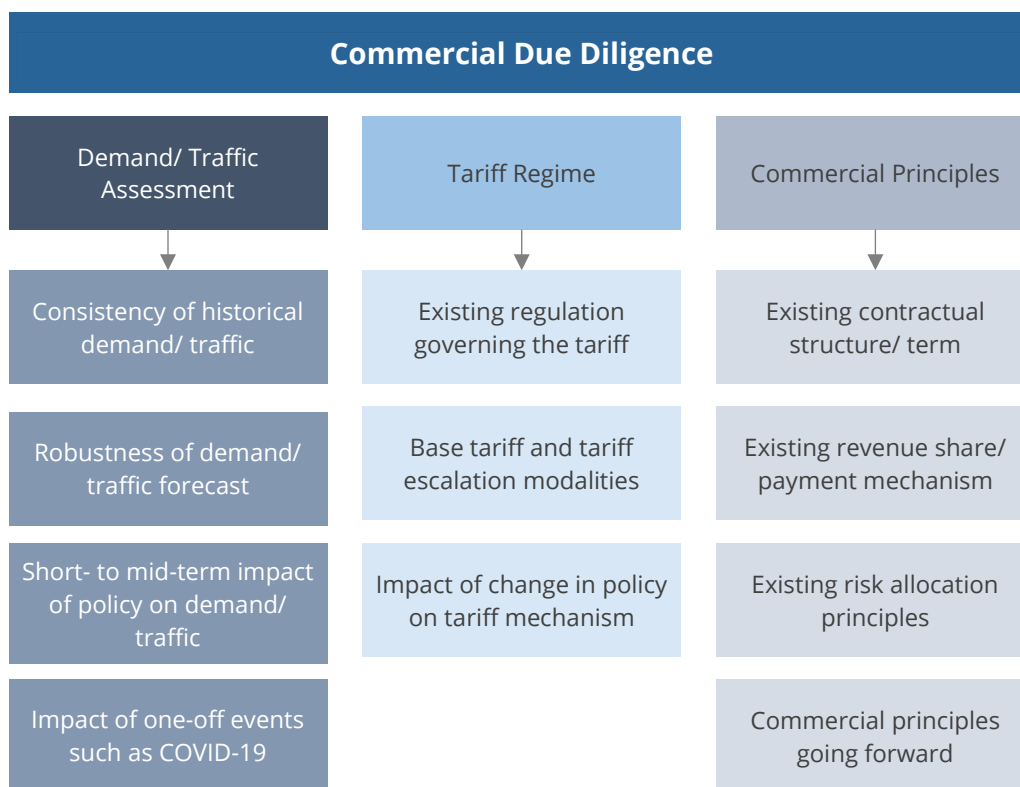
- Assess expenditure plan (for improvement of service levels, technological upgrade or increasing capacity) to meet expected growing demand / traffic / utilisation of the asset over the life of the concession or lease term.
- Assess any proposed timeline/ implementation plan and phasing of the expenditure plan.

The outcome of the technical due diligence should be provided as a report. As a minimum, it should report on the overall performance and condition of the asset, assess future capital, operational, and life-cycle expenditure plans.

Commercial Due Diligence

The coverage of the commercial due diligence process is represented in the diagram below:

Figure 2: Commercial Due Diligence Coverage



Demand/ Patronage/Traffic Assessment:

An assessment should be undertaken to assess historical and projected demand and its growth.

The following should be assessed:

- Trend: Review historical trend of demand to evaluate strength and stability of future demand and assess any observed volatility.
- Drivers of demand: Identify the potential factors impacting utilization of the asset; including macroeconomic, seasonal, fees and service standards.
- Policy changes: Assess previous and foreseeable policy changes that may impact future utilization of the asset.

Tariff structure:

Review the current tariff structure and applicable fee adjustment mechanism. This should also include non-core revenue streams (if any) as well.

- Tariff mechanism – Assess prevailing tariff mechanism and assess historical revenue. Assess future cashflow taking into account forecast for demand and patronage as discussed above.
- Tariff adjustment mechanism –Assess the prevailing tariff and tariff escalation regime and assess the adequacy of the mechanism to cover operating costs inflation.
- If there is no prevailing tariff, the Relevant Authority should set an appropriate tariff regime taking into consideration an acceptable level of return to the private sector investor considering the extent of revenue risk (and other risks) to be allocated to the private sector and the performance and service standards required to be met.

Commercial principles:

Assess commercial principles as set out by the governing contracts between the government and the asset owner. If there are no governing contracts, determine the set of commercial principles to govern the concession contract.

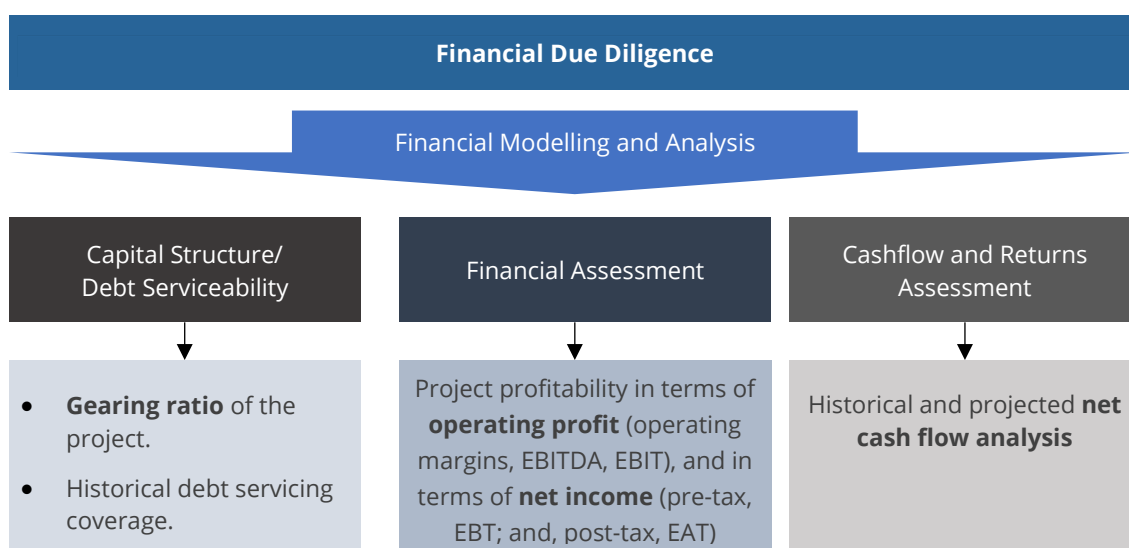
Aspects of commercial principles that should be reviewed include:

- Project period – assess the optimal period of the project based on the three principles of (i) maximizing financial return for the Relevant Authority; (ii) guidelines stipulated under relevant legislation, if applicable, and the terms of the project period will follow the requirements under the applicable regulations in the relevant infrastructure sector and (iii) returns for the private sector.
- Risk allocation – Assess prevailing risk allocation to determine if risks are allocated to the party best able to manage or mitigate that risk.
- Employment contracts – Assess workforce that may need to be redeployed for the functioning of the asset or, where required, transferred to the private partner after the transaction closes.

Financial Due Diligence

The financial due diligence should cover the analysis of the asset’s historical and projected financial performance. This will provide the Relevant Authority with an indication of the capital structure and debt serviceability, the asset’s profitability, and projected cashflow and returns.

Figure 3: Financial Due Diligence Coverage



The following assessments should be undertaken as part of the financial due diligence:

Assess and ensure the quality of financial information is complete and current. Financial information should include:

- Financial feasibility study for the development of the asset (if any).
- Financial statements of the entity responsible for development and operations of the asset.
- Financial model developed to assess financial performance of the asset.

- Internal audit reports and list of audit adjustments to assess potential issues; and
- Relevant financial forecasts.

Review existing capital and the financing structures, considering:

- Financing facility; including details of any senior and subordinated debt terms.
- Capital structure; including shareholding structure, preference shares and shareholder loans.
- Assess adequacy of historical cashflow generated from the asset to service debt facilities.
- Review off-balance sheet liabilities (if any) including operating leases, loan guarantees, swaps, hedges, etc.
- Review historical financial ratios including:
 - Debt to equity ratio = total liabilities / shareholder's equity.
 - Interest coverage ratio = EBIT / interest expenses.
 - Debt service coverage ratio = net operating income / total debt service.

Financial performance

- Assessment of the financial statements including:
 - Income Statement (Profit and Loss Statement).
 - Balance Sheet.
 - Cash Flow Statement and cash requirements.
- Key ratios to assess would include
 - Gross margin = gross profit / net sales.
 - EBITDA margin = EBITDA / net sales.
 - Net margin = net income / net sales.
 - Return on assets = net income / total assets.
 - Return on equity = net income / shareholder's equity.

As indicated above, a financial model should be developed by the Relevant Authority to ensure that the asset will be able to provide the private sector investor with an acceptable level of return; taking into account the upfront fee to be paid by the private sector to secure the concession (or lease) as well as operating and debt servicing costs.

Legal Due Diligence and Review

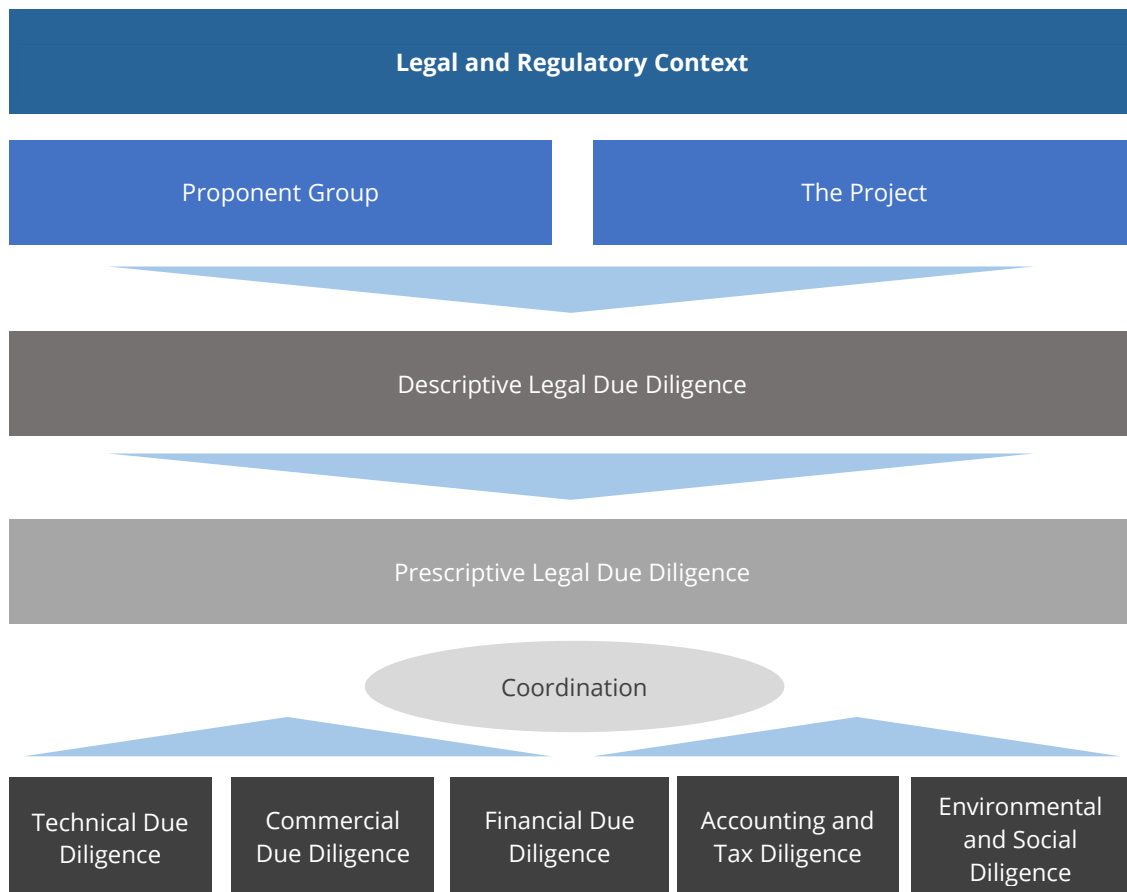
Legal due diligence in connection with an asset recycling transaction preparation covers the main topics listed below.

- Review of legal and regulatory context (in relation to the laws, regulations and policies affecting the asset owner and the transaction, as defined below);
- Legal due diligence (in relation to the Relevant Authority holding the asset and, to the extent relevant, its subsidiaries, affiliates, and joint ventures (collectively, the Relevant Authority Group), and any relevant enterprise-wide contractual arrangements; and

- Asset legal due diligence (in relation to the infrastructure asset, the project site and related supporting infrastructure and equipment, and related contracts and agreements (collectively, the Project)).

Legal due diligence outputs should be provided in the form of a legal due diligence report from a qualified national and as necessary, international legal counsel. Legal due diligence outputs should be both descriptive and prescriptive, as further described below. The legal due diligence reports (or portions of such reports) can be shared with potential bidders to facilitate and expedite bidder due diligence.

Figure 4: Legal Due Diligence Coverage



Review of Legal and Regulatory Context

Conducting due diligence with respect to the legal and regulatory context requires a review of the laws, regulations and policies affecting the Relevant Authority and the asset.

Areas covered may include:

- identification of relevant sector-based and general laws and regulations, including any regional regulations governing the asset's location.
- summaries of identified laws and regulations.
- identification and summary of any planned legal or regulatory changes (based on engagement with relevant stakeholders).

Legal and regulatory context typically places constraints on how the asset and related asset recycling transaction can be structured and implemented. Legal due diligence should identify these constraints and, in some cases, identify whether a change in regulation is required to facilitate the desired transaction.

The review of legal and regulatory context and legal due diligence should be carried out concurrently.

Note that, in some cases, resources regarding legal and regulatory context may have been prepared prior to the legal due diligence being commenced. This may need to be revisited, however, if significant time has passed since this review of the legal and regulatory context has been prepared, or major changes in law or regulation have occurred.

Descriptive Legal Due Diligence

Overview

Descriptive due diligence outputs are focused on describing the current legal aspects relevant to the Relevant Authority and the asset as at the review date. This description is without regard to any potential remediation, mitigation, alteration, structuring or restructuring activities (collectively, Project Structuring) which may be undertaken/implemented after due diligence is completed.

Box 3: Descriptive Legal Due Diligence

Illustrative Enquiry – Descriptive Due Diligence – Asset Recycling Transaction Legal Due Diligence

- What types of internal corporate level approvals at the Government/ Relevant Authority are required to implement the asset recycling transaction?
- Which existing subsidiaries, affiliates, or joint ventures of the Government/Relevant Authority (if any) will be potentially involved in or will affect the asset recycling transaction?
- Does a subsidiary, affiliate or joint venture own the Asset, the project site and/or related supporting infrastructure and equipment?
- Does a subsidiary, affiliate or joint venture have contractual rights that involve or affect the Asset, the project site and/or related supporting infrastructure and equipment,

Note: This part of Asset Due Diligence involves identifying which members of the Government/Relevant Authority are relevant to the Asset transaction, rather than reviewing the contents of the intra-group contracts themselves. These intra-groups contracts may include commercial and/or financing agreements which impact the asset recycling transaction.

- If relevant, what types of internal corporate level approvals any subsidiaries, affiliates or joint ventures of the Government/Relevant Authority will be required to implement the asset recycling transaction?
- In the case of joint ventures, identify the relevant joint venture partner and whether approval by the joint venture partner will be required to implement the asset recycling transaction or otherwise alter the existing arrangements relating to the asset recycling transaction. Does a member of the Government/Relevant Authority have the right to buy out the joint venture partner?
- Does the Government/Relevant Authority hold the correct business level licenses, permits and approvals to own, operate and maintain the asset recycling transaction in its current state?

Illustrative Enquiry – Descriptive Due Diligence – Asset Project Due Diligence

- Does the Government/Relevant Authority hold the correct specific licenses, permits and approvals to own, operate and maintain the Asset in its current state? When do these licenses, permits and/or approvals expire? What are their terms, conditions, and requirements? Can they be transferred, sub-licensed or surrendered and reissued in favour of the SPV?
- Are there any specific legal or regulatory constraints that would affect the way the asset could be structured?
- Who owns the project site for the Asset? Does the project site require rights of way or rights of access across properties owned by third parties? How does the Government/Relevant Authority access the project site (i.e., lease)?
- Are there any liens, encumbrances, or security over the Asset?
- What are the commercial contracts that affect the Asset?
- Which of these contracts are intragroup contracts (i.e., contracts between members of within the Government/Relevant Authority)? Which of these contracts are with other Government/Relevant Authority? Which of these contracts are with other third parties?
- When do these contracts expire and whether these commercial contracts contain any penalties, liquidated damages or contingent liability exposure for early termination or cancellation?

Scope of Descriptive Legal Due Diligence

The precise scope of descriptive legal due diligence will vary depending on the Relevant Authority and asset involved. Nevertheless, certain areas are expected to be covered in the typical project preparation activities for an asset recycling transaction.

The table below provides an **illustrative scope** of descriptive legal due diligence to be conducted by the Relevant Authority:

Table 4: *Scope of Descriptive Legal Due Diligence*

Legal Due Diligence		
1	Formation and governance structure of the Relevant Authority	<ul style="list-style-type: none"> • Review of constitutional documentation of the Relevant Authority holding the asset. • Number and composition of the board of directors and board of commissioners. • Protective provisions or reserved matters regime, including for material asset disposal or lease, entry in material contracts or financings, formation of subsidiaries, affiliates or joint ventures, and other relevant matter. • Other relevant aspects – date of establishment, corporate objectives, etc.
2	Scoping relevant aspects of the Relevant Authority (and its corporate group – “Relevant Authority”)	<ul style="list-style-type: none"> • Identification of any subsidiaries, affiliates or joint ventures of the Relevant Authority with ownership interest in the asset, the project site and related supporting infrastructure and equipment.

		<ul style="list-style-type: none"> • Identification of any subsidiaries, affiliates or joint ventures of the Relevant Authority which have entered into contractual relationships involving or affecting the asset, the project site and related supporting infrastructure and equipment.
3	Formation and governance structure of the Relevant Authority (subsidiaries, affiliates) or joint ventures identified above)	<ul style="list-style-type: none"> • Number and composition of the board of directors and board of commissioners. • Protective provisions or reserved matters regime, including for material asset disposal or lease, entry in material contracts or financings, formation of subsidiaries, affiliates or joint ventures, and other relevant matter. • Other relevant aspects – date of establishment, corporate objectives, etc.
4	Business level licenses, permits and approvals for Relevant Authority and each relevant member of the Relevant Authority (subsidiaries, affiliates or joint ventures identified above)	<ul style="list-style-type: none"> • Identify and confirm legal approvals (or notification, as applicable) for deed of establishment, articles of association and any amendments. • Identify and confirm receipt and validity of enterprise-wide business activity licenses (excluding licenses relating to a specific asset, location, property, or equipment). • Identify and confirm completion of relevant tax registrations. • Identify and confirm completion of other relevant enterprise-wide filings, registrations, and approvals.
5	Financing agreements not specifically related to the transaction (bond indentures, credit agreements and facility documents) which may affect the ability of the Relevant Authority to carry out the transaction	<ul style="list-style-type: none"> • Covenants / undertakings which restrict disposal or transfer of material assets. • Covenants / undertakings which restrict entry into contracts above a certain value or not in the ordinary course of business. • Other financing agreements with a similar effect.
6	Commercial agreements not specifically related to the transaction which may affect the ability of the Relevant Authority to carry out the transaction	<ul style="list-style-type: none"> • Shareholding agreements, joint venture agreements and/or cooperation agreements with third parties. • Covenants / undertakings not to compete with certain companies or enter into arrangements with a certain company's competitors. • Exclusivity or preferential arrangements with certain companies. • Other commercial agreements with a similar effect.
Asset Legal Due Diligence		
7	Licenses, permits and approvals for the Asset	<ul style="list-style-type: none"> • Location permit(s). • Approval of Environmental Impact Assessment. • Building Approval(s). • Operational Permit(s) and Licenses.

8	Documentation relating to ownership and use of the project site	<ul style="list-style-type: none"> • Land title documentation / certificates. • Lease agreement, rights of way or other cooperation agreements relating to land, building or site usage.
9	Financing agreements specifically related to the Asset	<ul style="list-style-type: none"> • Bond indentures, credit agreements and facility documents. • Any related security arrangements (encumbrance or assignment of rights).
10	Commercial agreements specifically related to the Asset	<ul style="list-style-type: none"> • Intellectual property licenses and warranties. • Fuel supply and feedstock arrangements. • Offtake agreements / usage agreements. • Maintenance contracts. • Technical assistance agreements. • EPC / construction / project management agreements for any ongoing projects and/or for completed projects (or which are still under warranty). • Marketing and sales arrangements. • Transportation contracts. • Facilities maintenance or maintenance contracts. • Subleases and sublicences. • Performance bonds and guarantees from subcontractors and service providers. • Any secondment arrangements. • Any other material agreements.
11	Equipment and other Project Assets (excluding the project site)	<ul style="list-style-type: none"> • Asset register relating to the asset. • Any title documentation and warranties. • Any other materials relating to owned equipment for aspects relevant to other aspects of legal due diligence noted above, such as arrangements for spare parts, service arrangements/contracts, maintenance/repair history, etc. <p>(Note: primary responsibility for this aspect of review will be covered in the technical due diligence).</p>
12	Staffing	<ul style="list-style-type: none"> • Review list of staff employed by the Relevant Authority that work directly on the asset, including position held and date hired. • Review terms and conditions of employment for each tier of staff. • Review status of social security or welfare registration and payroll documentation.

- Work permits and other required documentation relating to any foreign staff (if applicable).

(Note: Staffing review will be conducted with a view towards (1) understanding to what extent existing staff of the asset can be seconded or transferred to the private partner, if applicable, and (2) what the severance liabilities would potentially be if the transaction gives rise to staff redundancies).

Prescriptive Legal Due Diligence

Overview

Prescriptive due diligence outputs are primarily focused on describing the legal aspects of structuring options in relation to the descriptive due diligence outputs.

The output of the prescriptive due diligence will highlight how current legal aspects can be better conformed to (a) relevant legal and regulatory requirements, (b) legal aspects of industry best practice, and (c) (to the extent possible) legal aspects of recommendations resulting from the technical and financial due diligence.

As a result, prescriptive due diligence outputs should be prepared:

- after the descriptive due diligence has been completed (or at a sufficiently advanced stage), and
- in alignment with technical and financial due diligence activities and (if possible) any preliminary market sounding activities (for purposes of gathering feedback on industry best practice) for the relevant asset class.

Scope of Prescriptive Legal Due Diligence

Prescriptive legal due diligence is typically scoped in accordance with the outputs of the descriptive legal due diligence. This is because the required transaction structuring is typically remedial in nature. In addition, prescriptive legal due diligence outputs can address the legal related issues identified in the technical and financial due diligence work streams. The national legal counsel and/or international legal counsel (foreign qualified with relevant sector expertise) will be responsible for prescriptive due diligence outputs. The role of international legal counsel in this aspect is to ensure that industry best practice is applied to create bidder interest.

Impact on Asset Selection

It is possible that the findings from the descriptive legal due diligence highlights issues that may adversely affect the asset recycling transaction. This may be because issues will make it difficult, expensive to complete transaction/asset preparation, or because the asset has legal characteristics that would make it unappealing to bidders.

In these cases, the findings from undertaking prescriptive legal due diligence should indicate the possibility that, under then current circumstances, the project preparation would not proceed further on this basis. In this situation, a fundamental change in the legal/regulatory framework affecting the asset may be required before the transaction can proceed.

Box 4: Prescriptive Legal Due Diligence

Illustrative Areas of Enquiry - Prescriptive Due Diligence

- Is the asset appropriate for asset recycling? Do the results of legal due diligence indicate that it would be particularly difficult, expensive or time consuming to prepare the transaction for tender?
- Do the licenses, permits or approvals of the Relevant Authority need to be amended or altered in connection with the preparation to implement the transaction?
- Does the Relevant Authority need to obtain additional or different licenses, permits or approvals in connection with the preparation to implement the transaction?
- Does the Relevant Authority need to create a new subsidiary or affiliate to implement all or part of the transaction?
- Does any joint venture partner of the Relevant Authority identified need to be included as a stakeholder in the transaction preparation (for example, on the basis that the joint venture partner's consent will be required to transfer an interest in the asset or to amend or terminate a contract relating to the asset)?
- Alternatively, should the Relevant Authority buy out any joint venture partner during the transaction preparation stage, or plan on buying out the joint venture at a later stage?
- Does the Relevant Authority need to seek consent under, amend or prepay/repay any existing financing agreements identified in the descriptive due diligence?
- Whether some or all of the commercial contracts that affect the asset have terms and conditions that permit the potential structure of the transaction?
- Does the Relevant Authority need to seek consent under, amend or terminate any existing commercial agreements identified in descriptive due diligence?

Accounting and Tax Due Diligence

Other assessment includes accounting and tax due diligence, which should consider the following:

Accounting due diligence:

- Identify if the relevant accounting standard has been properly applied.
- Identify and recognize change of accounting treatment over the period of historical financial statements.
- Review and revise (when necessary) the proforma financial statements or other reports.
- Perform high-level quantitative adjustments to related accounts when necessary.
- Conduct a qualitative accounting impact analysis related to relevant accounting standard.

Tax due diligence:

- Assessment of how tax affairs are being managed and understand any past tax-related issues (if any),
- Identify any industry-level tax issues and any tax issues related to the operation of the asset.
- Assessment of the asset's exposure to relevant taxes and other potential exposure on related party transactions.
- Understand carry-forward tax loss position, composition and the extent these can be utilized.

- Review the outcome of the latest tax audits of the asset to determine risk levels within the business.

Environmental and Social Due Diligence

The Relevant Authority should be required to disclose environmental requirements (permits, standards, etc.), risks, issues, liabilities, compliance status. Climate risk disclosure can help raise awareness of and encourage efforts to reduce climate-related risks that may impact the asset.

Environmental Due Diligence

It is recommended to include the following:

- Biannual reports on environmental instrument implementation.
- Proof of company environmental certifications (e.g., ISO 14001)
- Third-party verification and professional certification of Asset compliance with sustainable infrastructure standards. Most internationally recognized standards include SuRe, ENVISION, CEEQUAL, GRESB
- Approved Asset Environmental Impact Assessment (EIA)
- Comprehensive Assessment of the Asset Overall Climate Risk Profile, including assessment of climate-related risks and hazards exposure and project vulnerability to those hazards. Projects undertaking a climate change resilience assessment must be broadly consistent with the key steps of the ISO 31000 Risk Management Standard and include both current and future climate conditions and impacts in the analysis [Infrastructure Canada, 2019 - Climate Lens Guidelines]. Based on this Assessment the Government/Relevant Authority could be able to determine which mitigation measures are best carried out in the transaction stage and define what it expects from the bidders in the asset recycling transaction. These expectations will in turn inform the structuring of the RFQ and RFP documentation.
- Risk Valuation of Climate Risk Identified for the Asset. Suggested methods include Scenario Analysis, Sensitivity Analysis, Probabilistic Analysis.
- Any available climate modelling tools relevant for the asset recycling transaction, developed by the Government/Relevant Authority or available for the Government/Relevant Authority
- Asset Disaster Risk Management plan (DRM plan)
- GHG Mitigation Assessment. The general guidance should be consistent with ISO 14064 Part Two: Specification with Guidance at the Project Level for Quantification, Monitoring, and Reporting of Greenhouse Gas (GHG) Emission Reductions or Removal Enhancements and/or the GHG Protocol for Project Accounting.
- Review of Asset climate change mitigation and adaptation plan (if any).
- Other project-specific environmental safeguards requirements such as geo-technical studies, hydrological studies, charting and geo-tagging of trees.

Social Due Diligence

For social due diligence, the following assessment should be undertaken and/or documentation disclosure:

- Description of social issues relevant for the Asset including land acquisition legacy issue, outstanding community grievances
- The implementation of grievance mechanisms for workers and communities is also an important requirement in a number of international standards (for instance, the IFC Performance Standards and OECD Guidelines for Multinational Enterprises). This includes operational-level grievance mechanisms as well as broader effective, secure, adequately funded and publicly accessible remedy processes, be they judicial or nonjudicial. A well-funded grievance mechanism that provides an important independent avenue for stakeholders to voice concerns and seek redress without fear of retaliation can help to build trust with stakeholders and affected communities [OECD (2021) "Towards a global certification framework for quality infrastructure investment: Private sector and civil society perspectives on the Blue Dot Network"]
- Right-of-Way (ROW) / Resettlement Action Plan (if applicable)
- Approved Asset Social Impact Assessment (SIA)
- Indigenous Peoples (if present or have collective attachment to the project location) - Rapid assessment of indigenous people issues, management strategies (general) and further study requirements shall be identified as part of the SIA Report for consideration in the project costing
- Existing culture and cultural resources including physical cultural resources and heritage sites that could be affected
- Review of Asset social/communities development program and historical related budget.

Gender Equality in Infrastructure

Factoring gender issues at the preparation phase of the project ensures that the technical and legal solutions selected for the asset considers the impact on and benefits to all members of the community. There is increasing recognition by private-sector infrastructure operators to cater more to women as users, improve the gender balance of their boards, source materials and services from more women-owned companies, and increase the number of women in the workforce.

It will also need to consider any negative impacts on the transaction that may disproportionately affect a specific gender.

Considering these risks, opportunities and developmental priorities, governments should refer to the primer on [Gender Equality, Infrastructure and PPPs](#), developed by the World Bank Group, which distils high-level advice to help practitioners plan and develop infrastructure assets that incorporate actions, design features, and strategies that will help close the persistent opportunity gaps between women and men. These include performing appropriate gender analyses in early stages of preparation on how the project affects men and women differently and incorporating the results of such analysis into the project design, results, and operations.

Asset Valuation Methodology

Valuation of the asset is conducted to estimate and determine the fair value of the upfront fee that a bidder may pay to the Relevant Authority (or any other form of consideration).

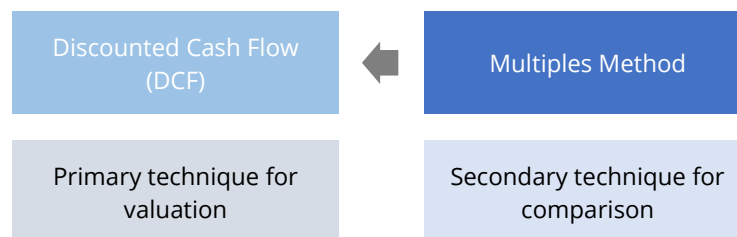
This is a crucial step in the due diligence process. The financial advisor typically is required to conduct such asset valuation exercise as part of its scope of work. Hiring experienced advisors is a significant factor to ensure that asset valuation is done as accurately and as closely to international best practice as possible.

The following basic principles would need to be applied in conducting valuation for assets under an asset recycling transaction:

- Appropriate techniques and methodology, such as the ones presented below, should be applied with respect to the nature, facts, circumstances of the asset and use of reasonable market data and technical assumptions.
- Due to uncertainties inherent in estimating the fair value for the asset, care should be applied in exercising judgement and making the necessary estimates.
- All available information that may materially impact the valuation should be factored in.
- Proper assessment of quality and reliability of all the data used in valuation.

There are two broad methodologies – Discounted Cash Flow (DCF) method and Multiples method – which can be used to value the asset.

Both discounted cash-flow and multiples approach have their own advantages and disadvantages. Therefore, both approaches should be conducted together to identify an appropriate asset price range.



Generally, the multiples approach should be utilized to verify or benchmark the asset value with other similar assets. It should be noted that for many infrastructure projects, it may be difficult to find similar transactions with publicly available accurate information, or publicly listed entities to use as benchmark for multiples-based valuation assessment given the specific nature of the concession arrangements.

Table 5: Asset Valuation Methodologies

Valuation Techniques	Methodology
Discounted Cash Flow	<ul style="list-style-type: none"> • This approach is used to estimate asset value based on its potential future cash flow. This form of analysis estimates the value of an asset based on projections of future free cash flows that can be generated over a specified timeframe (e.g., the proposed concession term). • The discounted cash flow formula is equal to the sum of the cash flow in each period, discounted to the present by using a discount rate.

Valuation Techniques	Methodology
	<p style="text-align: center;"> $DCF = \frac{CF_1^1}{1+r} + \frac{CF_2^2}{1+r} + \frac{CF_n^n}{1+r}$ </p> <p>Where:</p> <p>CF = The cash flow for the given year CF1 is for year one, CF2 is for year two CFn is for additional years</p> <p>r = Discount rate n = Period number</p> <ul style="list-style-type: none"> • Free cash flow to the firm (FCFF): represents the amount of cash flow from operations available after accounting for depreciation expenses, taxes, working capital and investment. This approach is an indicator of a company's operations and performance. • FCFF = Net income + non-cash charges + (interest x (1 - tax rate)) - long-term investment - investment in working capital. • Free cash flow to equity (FCFE): represents how much cash is available to be distributed to equity shareholders after all expenses, reinvestment and debts are paid. • FCFE = Cash flow from operations - capex + net debt issued. • Discount Rate: Given that the discount rate is crucial in arriving at the upfront concession fee, the discount rate should be reasonably aligned to the weighted average cost of capital of the private sector.

Valuation Techniques	Methodology
<p>Multiples</p>	<ul style="list-style-type: none"> • This approach is used to evaluate asset value as a ratio of another in order to make a comparison. • This approach is based on the premise that similar assets are valued at similar multiples with reference to their profit generation capacity (for instance, EBITDA or Profit after tax). This approach is relatively simple and uses similar prior transactions as a guide for determining valuation. • Some common enterprise value multiples used in valuation analysis: <ul style="list-style-type: none"> ○ EV/Revenue – the ratio of enterprise (asset) value (upfront proceeds to be realized) to the revenue of the project. ○ EV/EBITDA– the ratio of enterprise (asset) value (upfront proceeds to be realized) to the operational profit of the project. • The above matrices can be analysed using two common approaches to valuation multiples: <ul style="list-style-type: none"> ○ Comparable company analysis: Analyse assets that are similar to the valued asset. Some criteria that should be considered in finding the right comparable asset are (1) industry classification, (2) geography, (3) size (revenue, asset), (4) growth rates, (5) margin and profitability. ○ Precedent transactions: Analyse past transactions for assets within the same size / industry, which can be used as a reference point for the asset that is being valued. Some criteria that should be considered in finding the relevant transactions are (1) industry classification, (2) financial metrics (revenue, EBITDA, net income), (3) geography, (4) company size (revenue, assets).

Guidelines for Legal and Commercial Structuring Options

The legal and commercial structuring of a project involves defining the ownership model for project implementation, including allocation of roles and responsibilities, and risks between the Relevant Authority and the private sector party. Project structuring also involves defining the key commercial terms for the transaction of the asset under consideration.

Ownership Models

There are several variations as to how an asset recycling transaction undertaken by way of a concession or lease arrangement can be implemented. In this section, we discuss the following models:

- Concession/ Lease Model – where the selected private sector investor(s) form a SPV to enter into an asset recycling transaction with the Relevant Authority by entering into a long-term lease or concession agreement to operate the asset.
- Joint Venture (JVC) Model – where the Relevant Authority and the selected private sector investor(s) enters into a Joint Venture to jointly operate the asset under a long-term lease or concession.
- Partial divestment – where there is a partial divestment in the shares of an asset holding company by the Relevant Authority.

For the avoidance of doubt, these guidelines are specifically focused on concession/ lease model.

Concession/ Lease Model

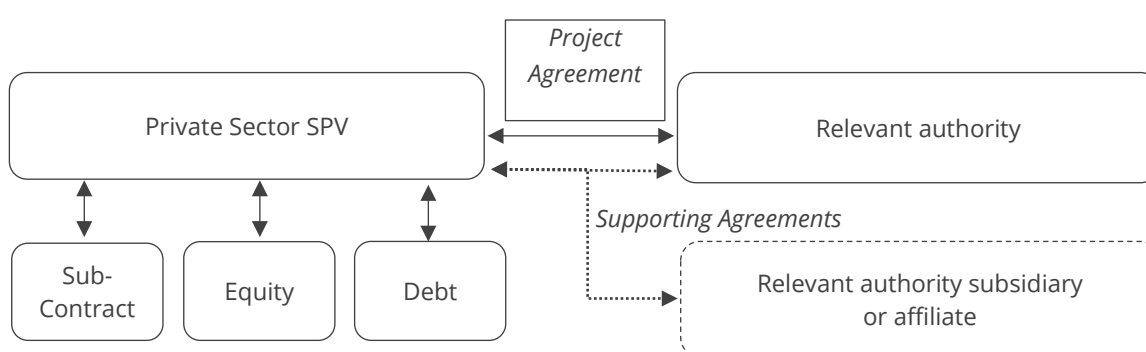
Under this model, the asset recycling transaction is implemented through a newly established limited liability company formed by the selected private sector investor(s) as a special purpose vehicle (Private Sector SPV). The Private Sector SPV will enter into the governing agreement with the Relevant Authority relating to the long-term operations of the asset. One or more of the Relevant Authority's subsidiaries or affiliates may also be included in the contracting structure under the following circumstances:

- The subsidiary or affiliate owns or holds rights to all or part of the project site and enters a lease with the Private Sector SPV and/or provides the Private Sector SPV with right of way or access to the project site.
- The subsidiary or affiliate provides the Private Sector SPV access to shared infrastructure; or
- The subsidiary or affiliate provides or sells goods (such as fuel or feedstock) or services to the Private Sector SPV and/or will purchase or acquire goods or services from the Private Sector SPV over the contractual term; or
- The subsidiary or affiliate has other rights and/or obligations relating to the relevant asset.

Agreements with the subsidiary or affiliate should be considered supporting agreements.

Under these circumstances, the subsidiary or affiliate should not be viewed as a substitute for the Relevant Authority. The Relevant Authority should be a party to the primary agreement with the SPV and should undertake that each relevant subsidiary or affiliate will comply with its contractual obligations to the Private Sector SPV, in a manner consistent with the agreed risk allocation.

Figure 5: Structure of Concession/ Lease Model



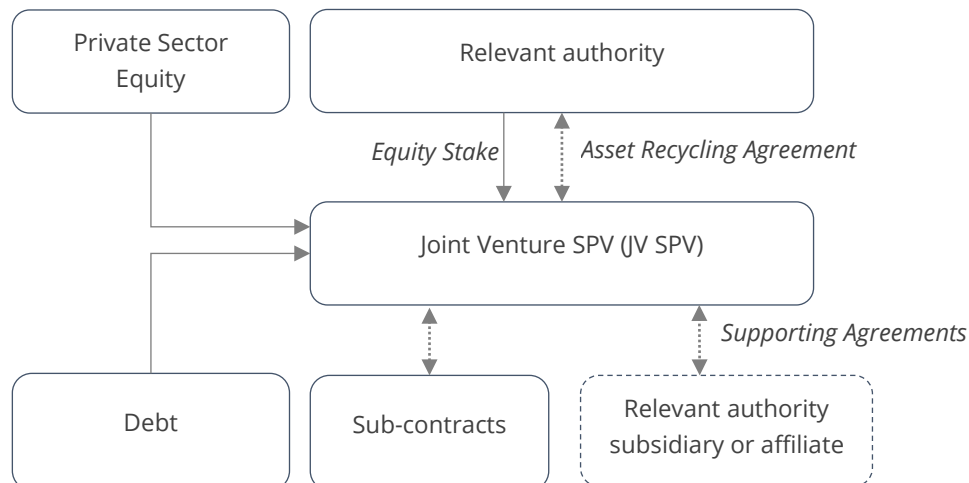
As further explained under [Risk Identification and Allocation](#), some licences, permits and approvals may be the responsibility of the Private Sector SPV, whilst others may be procured with the assistance of the Relevant Authority.

We note that under this model, the Relevant Authority may also take a stake in the Private Sector SPV. For the purposes of this discussion, this variation is not discussed under the Concession Model to distinguish between the Concession and the Joint Venture Models. The former model is a wholly private sector concession/lease whereas the Joint Venture Model involves the Relevant Authority holding a stake in the on-going operations of the asset.

Joint Venture Model

A variation on the above concession/ lease structure is the joint venture (JV) model, where the Relevant Authority holds an equity interest in the Joint Venture SPV as a shareholder together with the selected private sector investor(s) (JV SPV).

Figure 6: Structure of Joint Venture Model



The Relevant Authority may hold shares in the JV SPV directly. It may also consider having their subsidiary (typically 100% owned, with appropriate guarantees from the parent, assuming that the subsidiary is not independently creditworthy) enter into the JV with the private sector partner and hold the shares in the JV SPV.

This relationship will be governed by a shareholder's agreement entered into between the Relevant Authority and a separate JV SPV established to represent the private sector equity holders collectively. Under this structure, the private sector equity holders vote together and provide the Relevant Authority with a sole point of contact. Meanwhile, the project agreement for the asset will be entered into between the JV SPV and the Relevant Authority.

The JV approach may impact the financial attractiveness of the transaction to the private sector, including the following:

- The valuation of the Relevant Authority's interest in the underlying asset that is subject to the asset recycling transaction.
- The proportion of the Relevant Authority's economic interest as an equity holder in the JV SPV and its attendant voting rights.
- How any financing requirements will be addressed and the extent (if any) that the Relevant Authority can assist with or support any third-party financing efforts.
- Whether any private sector shareholder loans, subordinated debt or other financing sources will be permitted.

Other issues which should be considered for a JV structure include the following:

- The proportion of the Relevant Authority's voting rights as an equity holder in the JV SPV, and how that impacts the contractual rights of the Relevant Authority (or its subsidiary or affiliate) under other project documents.
- Share classes and related preferences and rights.
- Board representation and board level governance.
- Decision making procedures (including any protective provisions or consent rights granted to either the Relevant Authority or the private sector equity holder) and the procedure for resolving any 'deadlocks'.

Under the concession/ lease structure, the issues identified above are resolved amongst the private sector equity holders, and the Relevant Authority would have no exposure to these issues. In contrast, under the JV structure the issues identified above exposes and involve the Relevant Authority directly, and therefore must be considered together in relation to the overall risk allocation and attractiveness of the transaction.

The typical concession/ lease structure is usually considered to be simpler and more attractive to the private sector than a JV. However, there are some circumstances where a JV could be more appropriate for a particular transaction. These circumstances include:

- The asset has special characteristics, such as technical interface with other assets of the Relevant Authority (such as switchyards, transmission lines, pipelines, land and buildings, raw water supply, waste disposal facilities, stockpiles, fuel supply, terminals, private roads, etc.), that require close day-to-day coordination with the Relevant Authority to make the project successful.
The business activity, including ownership constraints (if any),
- The transaction's financial attractiveness is such that a minority portion can be retained by the Relevant Authority without deterring attractive bids from the private sector.

Box 5: Special Considerations for JV Structure

Special considerations for JV structure

- When using a JV structure, the Relevant Authority should consider the prospect of the project's overall success and balance its position accordingly.
- In many instances, the initial financial model will presume 100% private control to analyse whether the project structure will provide an appropriately attractive financial return.
- Introducing the Relevant Authority into the structure has the potential (1) to reduce the private sector's share of the potential return, and (2) to introduce additional related party payments (increased costs and expenses), thus making the project less attractive to private bidders when offered to market. The impact can be particularly acute under an equity carry model, where the private party finances all or part of the capital investment required including the portion of the Relevant Authority's (e.g., if the project requires the private partner to redevelop the asset).
- Another important consideration relates to the control over the JV SPV between the Relevant Authority and the private party, which may create complications in the decision-making process and affect the ability of the private party to control and improve operations of the asset and, ultimately, to maximise the project's financial return.

Risk Identification and Allocation

The Relevant Authority should identify and allocate risks for the concession or lease arrangement as part of the transaction preparation. The objective is to ensure that specific risks are transferred to the party best able to control or mitigate those risks, thus improving the bankability and ensuring long term quality service.

Risks should be:

- retained by the Relevant Authority.
- transferred to the private sector; or
- shared between the Relevant Authority and the private sector.

Risk identification

As a first step, the Relevant Authority should put together a comprehensive list of relevant risks associated with the project in the form of a risk register. Although the risks may vary from transaction to transaction, there will be certain risks that are common to all or most transactions.

The Relevant Authority should group these risks into risk categories associated with respective functions or with respective phases as shown below:

Box 6: Common Risk Categories

Common Risk Categories

- Operations — the risks related to successful operations of the asset, including the risk of interruption in service or asset availability, or the risk that the cost of operating and maintaining the asset is different than projected.
- Demand — the risk that the usage of the service (or demand) is different than projected, or that revenues are not collected as expected.
- Regulatory risks — risk of regulatory changes that adversely affect the project. For example, changes to tariff setting mechanisms impacting revenue streams.
- Change in law — the risk that a change in general law adversely affects the project, such as changes in general corporate taxation.
- Financial — risk that changes in interest rates, exchange rates or inflation adversely affect the project outcomes.
- Default — the risk that the private party to the project contract turns out not to be financially or technically capable to implement the project.
- Force Majeure — risk that external events beyond the control of the parties to the contract, such as uninsurable natural disasters affect the project.
- Climate-related risks –such as risks related to the physical impacts of climate change (Climate Change Physical Risks) and risks related to the transition to a lower-carbon economy (Climate Change Transition Risks).

Risk allocation

After identifying the asset-specific risks, the Relevant Authority should consider the following three principles in allocating risks:

- Which party is best able to control the likelihood of the risk occurring?
 - For example, if the private party will oversee the asset operations because it has the most expertise in that area; this also means bearing the cost of operating and maintenance expenses.
- Which party is best able to control the impact of the risk?
 - For example, the private party may be responsible for the demand/ usage of the asset if it has expertise in introducing measures to boost the demand/ usage of the asset.
- Which party is best able to absorb the risk at the lowest cost, if the likelihood and impact of risks cannot be controlled?

Template for risk matrix

The risk matrices for specific sectors are provided in [Modules 1 to 4](#).

Commercial Principles

The Relevant Authority should determine key commercial principles that will form the basis of the project structure and the project agreement; the commercial principles should ensure value optimization in terms of financing raised by the Relevant Authority and value proposition (in terms of suitable returns) for the private sector.

- **Concession period:** The term of the contractual arrangement under an asset recycling transaction may be subject to sector specific regulations. In determining the concession period, the Relevant Authority should consider two principles (i) optimizing the funds raised by the Relevant Authority through the asset recycling project (e.g. the upfront fee or revenue share), and (ii) phasing of major capex (if any for future expansion, upgrade, or refurbishment are contemplated). As a general principle, the longer the concession period, the more funds the Relevant Authority can leverage from the project; however, an increase in concession period beyond a certain year may not result in significant increase owing to the discounting effect of cashflows that are in the distant future.
- **Payment mechanism:** The Relevant Authority should determine the optimum mechanism for its receipt of funds from the project, such as minimum upfront fee expected to be paid by the private sector, minimum periodic payments by the private sector, profit sharing or dividend payments, reflecting the asset valuation methodology as discussed previously.
- **Force majeure events:** Force Majeure provisions and how they operate will be fairly typical and reflect risk allocation determined in the project risk matrix. The Relevant Authority will have to determine the extent to which certain government events (such as government actions or inactions and changes in law) will be shared and the protections the private sector should be allowed to safeguard its investment.
- **Default events:** Depending on its severity, a default may be subject to a project default regime, a persistent breach regime or a termination regime. The default regime will involve

the Relevant Authority giving notice of the occurrence of a certain default (for example, a serious service failure) and the private party using a cure period to rectify.

- Termination events: The Relevant Authority should be able to terminate the contract should certain termination events occur. These should include circumstances where the private partner is abandoning the asset, default events not being cured over a prolonged basis, or an insolvency event in relation to the private partner.
- Default/ termination payments: The private partner will not be guaranteed any payment by the Relevant Authority if the concession or lease agreement is terminated as a result of a default by the private party but, conversely, termination payment will be due in certain scenarios such as government default and for certain situations of prolonged government force majeure (including discriminatory changes in law).
- Government step-in: The government should be able to step-in and assume some or all the service delivery obligations of the private partner under certain circumstances including when there is an emergency, a serious risk to the environment, the public or users of the facility or a serious risk of material damage to public or private property.
- Hand back at the end of concession period: The private partner will ensure that the asset meets the return conditions at end of the concession or lease term.

Multi-asset Procurement (Asset Bundling)

Governments considering asset recycling transactions may envisage bundling multiple assets of same asset class as part of a single asset recycling transaction.

Some key parameters to consider are:

Table 6: Key Parameters to Consider for Multi-asset Bundling

Parameter	Considerations for Multi-asset Bundling
Criteria to Consider Bundling	
Value for Money Outcome	In some cases, small-scale assets may not achieve either value for money outcomes or sufficient proceeds for re-investment. Bundling can then be a solution to that issue.
Private Sector Interest in Scale	The asset size and potential should be sufficient to generate market and private sector interest. This can be tested in the initial market sounding.
Investor/ Lender Confidence	Debt and equity financiers generally view bundled projects as more favourable given the higher ticket size and diversified risk profile. Specifically, for equity investors, this may justify higher bidding and internal business case.
Multi-asset Synergies	There may be operational synergies (for instance, in cases of road networks or rail networks) in bundling the assets.
Cross-subsidization	There may be opportunities to bundle commercially viable and sub-viable projects wherein the private sector can cross-subsidize the losses.
Efficiencies in Procurement	More efficient procurement and contract administration thus minimising transaction costs and time. Pricing efficiencies enable the Relevant Authority to lock in the price of several projects in a single procurement.
Criteria to Not Consider Bundling	

Complexities	Bundling of multiple assets under a single concession may lead to additional complexities and risks, for example, operational delays that impact only one of the bundled assets and has an impact on the entire bundled portfolio due to cross-default provisions.
Reduces Competition	Depending on the size of the transaction (i.e., number of bundled assets), bundling may reduce the pool of bidders, thus reducing competition.

Market Sounding

The government should approach the market sounding exercise to assess the following:

- **Project viability:** whether the proposed asset put up for recycling is viable (from private sector's perspective);
- **Capability and capacity of the private sector:** the ability of the private sector to achieve the requirements both in terms of service delivery and financial obligations with respect to the project; and
- **Maturity and competitiveness:** the level of competition in the market (domestic and international) to ensure that the tender process is competitive and will drive an optimal financial outcome.

Pre-market sounding preparation

In preparation of market sounding, the Relevant Authority should undertake the following activities:

- **Participants to be invited:** The Relevant Authority should prepare a list of the following stakeholders (domestic and/or foreign) to be invited for market-sounding:
 - Experienced Service Providers/ Large Construction Contractors / Strategic Investors/ Institutional or Financial Investors – This is required to gain insights on market conditions, technical aspects of the project and the allocation of risks.
 - Lenders/ Financiers (including commercial and multilateral banks) – This is required to understand the bankability considerations (from lender's perspective).
- **Invitation to participants:** The Relevant Authority should share the invitation to market-sounding participants well in advance to plan travel arrangements when required; the invitation may be shared via email, virtual event, social media, newspaper / trade journal publications.
- **The Relevant Authority should distribute, as part of the invite, a project briefing note, to enable participants to learn and acknowledge some information on the project beforehand. The briefing note should include the following topics:**
 - Background of the sponsoring Relevant Authority.
 - List of other government agencies involved - including roles and responsibilities of each agency.
 - Project description – brief description of the transaction.

- Scope of the project – scope of each engaging party and explanation on payment mechanism.
- Summary of technical assessment - including condition of assets and supporting infrastructure.
- Summary of financial and commercial assessment – include summary of historical financial statement of the asset and key commercial terms.
- Legal assessment – includes the parameters of legal ownership of the project.
- Timeline of the project – information on expected timeline throughout the transaction of the project.
- Appropriate timing of market-sounding: The market-sounding exercise should not be carried out at too early a stage; equally, it should not be carried out at too late a stage; a few weeks prior to the planned commencement of the bid process, would probably be an appropriate time to undertake formal market sounding (of course, the transaction advisory team may have also undertaken some market sounding to seek specific inputs for some aspects of the transaction structure and also to gauge preliminary interest in the transaction).

Market sounding checklist

The following checklist represents some best practices while undertaking a market sounding exercise:

- Make sure that the market-sounding exercise is in line with relevant procurement rules.
- Consider market-sounding exercises after the project preparation stage and before formulating the procurement plans in detail.
- Invest time in preparing the background documentation; be clear about the issues to be discussed with the market (for example, information on proposed risk allocation, compensation, and structure).
- Involve multiple individuals with multiple skill sets (technical, commercial, financial and legal) from the Relevant Authority.
- Be consistent about the responses to the respondents; ensure that meetings are documented.
- Regarding climate resilience and sustainability, it is recommended to:
 - Approach local and international insurance companies to discuss the feasibility of insuring Asset's main climate risks identified at reasonable costs.
 - Approach local and international financial institutions to discuss green / ESG / sustainability financing options that could apply for the Asset.

Stakeholder Consultation

Better understanding of communities' concerns by engaging them directly to identify their key fears and threats, and how they might be addressed, can help tailor the Asset Recycling programme to the needs and values of local communities.

Mechanisms should be created that encourage the public community to engage throughout the whole process. These mechanisms include public opinion surveys and town hall meetings that can help identify people's concerns as well as the public's reaction to the rationale for the Asset

Recycling programme, and to proposed solutions to address concerns. Adopting a more collaborative process with the local community during the planning and implementation stages can considerably reduce opposition and build support. The important messages that can be conveyed in community consultations include – avenues for reduced borrowing and reduced taxes resulting from proceeds generated, and increased employment from reinvestment of proceeds into new infrastructure development, and in particular, green and sustainable infrastructure.

Box 7: Case Study on Lessons Learned from Asset Recycling Initiative in Australia

Case Study: Lessons learned from project preparation for asset recycling transactions under the ARI of Australia.

The approach for asset recycling transactions in Australia under the ARI was based on maximizing the level of proceeds without compromising policy outcomes. To facilitate bidders to maximize their offers, governments addressed the issues before going to market and looked to create arrangements that provided certainty to the concessionaire post concession. Some key success factors include:

Pre-transaction planning

- Appointment of specialist advisors across multiple areas
- Defining asset opportunity to be monetized.
- Preparation on policy issues for SOE after monetization
- Identify “gaps” or “problems” that may affect value and address them

Detailed vendor due diligence

- Findings from the due diligence conducted by the government's advisors were made available to bidders, with the winning bidder able to rely on legal and technical reports

Enabling legislation

- Most assets required new laws / regulations to give certainty to the bidders
- New laws / regulation to cover gaps, protect the SOE and new private sector partner, were instituted

Policy and political decision making

- Maximizing the upfront premium for the asset, was balanced with the longer-term interests of the public
- The policy issues go beyond price maximization, including:
 - investment environment and appetite
 - the size and shape of the transaction package

Bidder engagement/ Market sounding

- As the market appetite may vary depending on size and shape of transaction package, soft market sounding was useful to seek the views of investors on matters that go to the attractiveness of the asset
- Information memorandum sent to interested bidders in advance

Transaction documents

- Key transaction documents typically included Sale and Purchase Agreement, Long-term Concession / Operation Deed, Lease of Land / Property, Lease of Chattels on Land, Transitional Service Agreement, Financier Deed, Other miscellaneous documents

The bidding process – “M&A” Approach

- The process for an asset recycling transaction has been run like a "corporate investment" or "M&A" deal as opposed to an infrastructure procurement

Tendering Process

Procurement Guidelines

The selection of a private partner through a tender process is the next step in the lifecycle of an asset recycling project involving a private operator. There are several milestones involved in this process. An illustrative process is mentioned below; however, this is subject to the applicable laws of the relevant jurisdiction:



The Relevant Authority should consider the following key principles when implementing the bidding process:

- *Timeline management* – The proposed bidding timeline should consider the availability of key decision makers at the Relevant Authority. To ensure efficiency, the Relevant Authority should adhere to the proposed timeline as much as possible. Uncertainty in bid timelines, repeated delays and ad-hoc extensions may discourage serious investors.
- *High-quality bid documents* - The Relevant Authority should invest sufficient time and effort into the development of a comprehensive bidding process and high-quality bid documents. The bid documents should include both the Request for Qualification (RfQ) and Request for Proposal (RfP) and the draft transaction agreement.
- *Transaction resourcing* – An asset recycling transaction requires sufficient resources to achieve the optimal outcome for the Relevant Authority. This should entail the allocation of appropriate staff empowered to make necessary decisions to advance the transaction, as well as the appointment of advisors.
- *Transparency in bid process* - While changes are normally expected during a tender process, significant changes in the transaction structure, scope and timeline and documentation may indicate a lack of preparedness or understanding of the market. If these are unavoidable, the Relevant Authority needs to communicate the rationale for these changes to ensure that confidence of potential investors is not adversely impacted. Conducting market sounding in advance of a transaction offers them the opportunity to plan and provide inputs before the formal bid process starts. The initial discussions followed by clear and reasonable timelines should result in a smoother bid process.

Key points to consider during the bidding process

The following key points should be considered during the bidding process:

- *Anti-corruption* - Clear policy should be set out to manage perceived or actual corruption (if any). Measures for countering such activities should be developed in detail and laid out

accordingly. All processes should have built-in safeguards for disclosure, clear disclosure of the applicable code of conduct, structured oversight, and internal and external audits.

- *Disclosure* – Conflicts of interest - Predefined guidelines should set out governing conflict of interest so that all parties are clear as to the rules. A conflict check should be conducted for parties involved in the bidding process, including transaction advisors, tender committee and Relevant Authority officials. Parties to the transaction should disclose any potential conflict between their personal and family interests as per the predefined guidelines.
- *Code of conduct* - Compliance with the code of conduct will be mandatory for all parties involved in the bidding process. The pre-qualified bidders will also sign this code of conduct to be developed by the Relevant Authority. The code of conduct should cover the following:
 - Protocol for communications between the bidder and the Relevant Authority (and its delegates including advisors).
 - Prohibition of collusions between separate bid teams; and
 - Timely disclosure of any conflict of interest.
- *Audit* - Audits should be conducted to ensure compliance, as per predefined guidelines/procedures. This is particularly important for the process of selection of the preferred bidder.
- *Prohibited participants* - A list of prohibited/blacklisted bidders should be maintained. These bidders should not be allowed to participate in the bidding process. The Relevant Authority may utilize any existing list it has for this purpose. The Relevant Authority should also consult with other relevant government procurement agencies to develop this list.
- *Security environment* - All bid-related documents should be kept confidential and in a secured environment to prevent espionage. This is the responsibility of all those responsible for handling bid related documents.
- *Changes in composition of bidding consortia* - Changes in consortia during the bidding process should only be permitted in compliance with the terms of the RfQ/RfP and, if so permitted, must be communicated to the Relevant Authority in writing, along with reasons for the change and its impact on the consortium.
- *Bidder due diligence* - The Relevant Authority should facilitate bidder due diligence by providing a data room containing historical information regarding the asset. In some cases, it may be considered more efficient for the Relevant Authority to prepare "due diligence reports" by the appointed advisers for inclusion in the data room. If the advisers are globally reputed firms and the reports are perceived as non-partisan, this would help the bidder due diligence process and provide potential bidders with confidence in the process.
- *Site visits* - Bidders should also be given adequate opportunity to conduct their own due diligence on the asset. The protocol for due diligence and site visits should be communicated in the bid documents.
- *Bid validity period* - A sufficient bid validity period should be specified in the bid documents. The duration should balance the need for certainty for the Relevant Authority while avoiding an overly long bid validity period that will impact investors' perception of the deal and to price in a risk premium for an overly long validity period.
- *Bid security/bond* - A bid security/bond commensurate with the transaction size should be provided by bidders.

Role of Tender Committee

In proceeding with tendering an asset recycling transaction, a tender committee should be formed. The functions of the tender committee include:

- finalization of bid documents (in case of changes in project/contract structure).
- evaluation of bids.
- selection of the final preferred bidder; and
- final negotiations.

The decision to form a tender committee is transaction-specific and at the discretion of the Relevant Authority. Generally, the Relevant Authority should mobilise an internal team for this function. However, for certain transactions the Relevant Authority may appoint representatives from external parties. Other members, such as legal, financial, or technical experts, who may be considered necessary for the project evaluation may also be appointed to the tender committee. Alternatively, they could provide their expertise to the tender committee as external experts or advisors.

In case of material changes to the transaction structure, the tender committee also needs to ensure that the Relevant Authority agrees with any revised risk allocation and contractual terms. A formal approval from the Relevant Authority is required where there are material changes to the previously agreed transaction structure or scope.

Outline of the Documentation Needed to Tender Asset Recycling Transactions

In tendering an asset recycling transaction, the following documents are required:

- Request for Qualification (RfQ).
- Request for Proposal (RfP); and
- Draft transaction agreement.

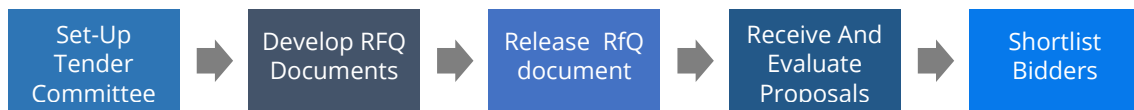
Request for Qualification (RfQ)

The **purpose** of the RfQ is to:

- Formally inform the market of the proposed opportunity, scope, timeframes of the transaction.
- Ascertain the level of market interest in the transaction and allow interested parties to comment on the proposed concession or lease arrangement.
- Shortlist bidders who are technically, financially, legally, capable of meeting project objectives and are to be invited to the RfP phase.

The period for the RfQ would vary from transaction to transaction. It should typically be no more than eight (8) weeks from launch of the process to the closing date for submission of responses.

The RfQ process would typically follow the steps below:



Develop RfQ documents

The Business Case should direct the drafting of the RfQ. The Relevant Authority should consider the following when drafting the RfQ:

The RfQ should contain sufficient information to allow potential bidders to assess the transaction opportunity with regards to whether they have the requisite capacity and capabilities to bid, identify potential partners for the transaction and identify potential project risks and issues.

The information requested from bidders should be such that it enables the Relevant Authority to assess their technical, financial and legal capabilities to undertake the project and shortlist bidders (usually three to six) most capable of meeting the requirements of the Relevant Authority.

The RfQ should not require bidders to spend significant resources in preparing the response.

Information to be provided to the bidders

The RfQ should seek to provide the following information to the bidders:

- A brief description of the Relevant Authority's background, function and purpose.
- An overview of the opportunity, its objectives and expectations.
- Details of the asset.
- An overview of the RfQ steps and timeline (including activities such as Q&A, consultation, etc.) and an indicative timeline for the subsequent stages of the process (RfP issuance, pre-bid meetings etc.).
- Details of the services that the private sector is expected to deliver, covering inclusions and exclusions.
- The commercial principles, including the risk allocation and proposed revenue model.
- Details and the basis of evaluation of the responses to RfQ; and
- Other general terms and conditions of RfQ.

Information to be sought from the bidders

The RfQ should seek the following information from bidders:

- Details of the bidders, including technical capabilities and experience in similar projects and the sector, financial position, legal status, experience in country / region. Also, similar details of each participating member of the bidder if the bidder is a consortium.

- Overview of the bidder’s proposed approach to the project; particularly with respect to the operational aspects of the asset; and
- Information about the bidder’s track record and capability to successfully financially close the transaction and operate the asset.

Evaluation criteria and methodology

Agreed evaluation criteria and methodology defined at the business case stage should be applied. These include settling the following:

- Evaluation team / tender committee structure, including protocols on interaction with advisors and bidders during the evaluation process.
- Evaluation methodology including details on how the responses to the RfQ are to be assessed and the weighting of each criterion; and
- The approval process; including the role of the Relevant Authority and any other government bodies/authorities.

The key evaluation criteria that should be applied at the RfQ stage should include:

Table 7: Key Evaluation Criteria for RfQ Stage

Evaluation criteria	Description	Examples of documents required
Composition of consortium	<p>The composition of the consortium is an important consideration.</p> <p>The RfQ will request for information of the experience and financial strength, and track-record of each of the respective members.</p> <p>The responses to the RfQ will define the roles of each participant and demonstrate how the relationships between the parties operate. If the proposed organisations have not worked together previously, the evaluation team will consider how members of the consortium will collaborate to deliver the necessary outcomes for the management and operations of the asset.</p>	<p>Organisation chart, Memoranda of Understandings (MOUs), Consortium Agreement, etc.</p>
Track record	<p>The bidder’s experience and track-record in delivering transactions and projects of a similar nature. This assessment criteria needs to consider the bidder’s track-record in delivering outputs to comparable standards under long-term contractual arrangements (for instances under a Public Private Partnership arrangement).</p>	<p>Past credentials, Project completion certificates from clients, etc. in a prescribed format</p>

Evaluation criteria	Description	Examples of documents required
Approach and innovation	<p>The RfQ will call for bidders to outline their proposed approach to the management and operations of the asset over the life of the contract.</p> <p>The bidder should demonstrate an understanding of the key issues and an understanding of the Relevant Authority's objective/s with respect to the asset.</p>	Technical proposal
Financial position and financing	<p>An asset recycling transaction would involve the payment of an upfront fee from the winning bidder to the Relevant Authority. In some cases, capital investment may also be needed for asset refurbishment or expansion.</p> <p>The Relevant Authority should seek to understand the financial position of the bidders and/or their ability and experience in raising any required external funding as required.</p> <p>Affirmation of the bidder's ability to secure funding requires an examination of the financial position of the members of the consortium and consideration of financiers' perception of the organisations and the transaction in general.</p>	Audited financial statements, letters of parent's and potential financier's support etc.
Conflict of interest	A bidder should confirm the absence of any conflicts of interest.	A statement of absence of any conflicts of interest in accordance with the template
Climate Resilience, Environmental and Social	<p>Bidders should meet the following requirements in a preliminary assessment to determine a short-list to proceed to RfP:</p> <ul style="list-style-type: none"> ● Company track-record of environmental compliance ● Extent of past experience with projects with a similar climate risk profile, as well as with the effective mitigation of climate risks in such projects ● Demonstrate academic and professional experience and expertise in climate resilience in the bidder's team 	

Evaluation criteria	Description	Examples of documents required
	<ul style="list-style-type: none"> • Proof of implemented the bidder's Environmental and Social Management System (ESMS) • Manage assets and projects responsibly for environment • The bidder's corporate commitment to net-zero emissions • The bidder's corporate gender equality program / policies • Bidder should provide its ESG credentials and comply with EGS criteria 	

Prequalification (PQ) Process

Release RfQ

- The RfQ is typically advertised publicly to provide an opportunity for all interested parties to respond. The timeframe for response may vary depending on the size and nature of the project, and, accordingly, may be decided by the Relevant Authority.
- A briefing session may be held for interested parties to ensure that potential bidders understand the requirements of the Relevant Authority.
- The RfQ will stipulate administrative and substantive requirements for a complete submission. These requirements may be based on templates provided in the RfQ or may be in free form. Overall, the contents will be intended to cover the 'Key Evaluation Criteria' as specified above and tailored to the particular transaction.
- From an administrative perspective, the RfQ submission will typically include templates for the following documents: statement letter (certification of the contents of the submission); power of attorney (authorising a person to make the submission on behalf of the relevant company or consortium); integrity pact (certification against corruption, etc); list of experience and financial statements.
- The submission must be made in the form and manner, and by the deadline, provided in the RfQ document. Minor deviations from the formal requirements or minor administrative non-compliance may be waived based on the Relevant Authority's discretion, but only if doing so does not have the potential of favouring one potential bidder over another.

Receive and evaluate proposals

- The evaluation process commences after bidders have submitted their responses. Bidders may be invited to present their proposals or to have clarification questions asked with respect to their proposals. RfQ responses will be evaluated by the tender committee.

Shortlist bidders

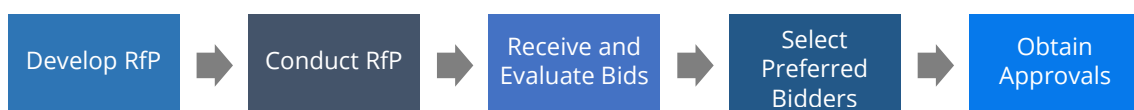
- The evaluation process will result in the shortlisting of bidders for the final and binding bidding or the RfP process. The responses will be evaluated in accordance with the evaluation criteria.

- The RfQ responses should be kept secure, with only the tender committee having access to the submissions. The number of parties shortlisted may vary, depending on the capability of bidders to meet the requirements of the project (although it is observed that in such procurement processes, three to five bidders appear to be standard).
- The Relevant Authority should bear in mind the following:
 - Bidders should not be shortlisted to make up the numbers; instead, shortlisting should be based on an assessment that each of the shortlisted bidder has the requisite credentials and ability to close the transaction.
 - An appropriate number of bidders should be shortlisted to ensure competitive tension and protect against the risk of withdrawal, while ensuring that bidders are motivated to bid by not shortlisting too many bidders and also maintaining the process practicable from the perspective of the Relevant Authority.

Request for Proposals (RfP)

After the bidders have been shortlisted through the RfQ process, the next step is the request for proposal (RfP) to request for binding bids and select the preferred bidder.

The diagram below outlines the key steps of the process:



Develop RfP Documents

The RfP and the contract to which the Relevant Authority will be party should be developed in parallel with the RfQ process. This maximises the utilization of time and ensures that the project progresses efficiently.

The RfP outlines the project structure, covering commercial, operational, technical, design and legal aspects, to solicit binding responses from the shortlisted bidders. These requirements should be communicated clearly through the RfP document as bidders are expected to expend significant time and resources in developing their responses.

The following information should be provided to the bidders:

- Overview of the RfP, covering the structure and the content of the documents.
- Background – including details of the transaction, description of the asset, the Relevant Authority's role, any other responsible agency and key stakeholders.
- Transaction scope covering key elements of the transaction; the details of which can be drawn from the business case.
- Performance specifications – including an outline of the service level specifications and minimum performance standards.
- Tendering process – detailing formal tender requirements, processes and timelines, as well as communication protocols.

- Commercial framework summary encompassing overview of the terms of the transaction, the payment mechanism and the revenue model, the proposed allocation of risks and other key terms and conditions.
- The draft contract agreements. There may be a number of contractual documents associated with each project. This will include a project agreement, which serves as the primary contract and other supporting agreements. If the transaction is structured as a joint venture with the Relevant Authority, there will also be a joint venture agreement. These contracts are intended to provide a framework for the project together with technical schedules detailing performance specifications. The draft contract is developed along with other RfP documents and issued to bidders, as a part of the RfP package, to ensure that the bidders are aware of the specific contractual terms that the Relevant Authority is seeking and have an opportunity to raise clarification questions or flag potential issues during the bid process. A model term sheet for an asset recycling agreement is included as Module 5 of these guidelines as one example and a starting point for developing term sheets for multiple types of asset recycling transactions.
- Evaluation criteria – including detailed breakdown of how the bids or RfP responses would be evaluated and scored by the tender committee and the weight given to each evaluation parameter.

Information to be submitted by bidders

The RfP should seek the following responses from bidders:

- Details of the bidder – including consortium structure, ownership structure, interface with other consortium members (confirming what was submitted as part of the RfQ and if there have been any changes to the same and any additional binding documents for the consortium).
- Operational plans and service delivery plans, to ensure that minimum service standards are always delivered.
- Technical proposal should the Asset incorporate potential redevelopment or expansion of the asset;
- Project management details leading up to service commencement.
- Any identified third-party or supplementary revenue opportunities.
- Details of proposed funding structure and level of commitment, as well as the proposed capital structure.
- Proposed interface with the Relevant Authority and other relevant stakeholders.
- A financial model detailing financial projections of the asset's performance over the project term.
- The financial bid (upfront fee or phased fee or revenue share, etc.).
- Proposal for climate mitigation and adaptation plan for the asset, including proposal of GHG emissions reduction (total emissions or emissions intensity).
- Proposal for Emergency Preparedness and Response plan (EPR plan) and Disaster Risk Management plan (DRM plan) for the Asset.
- Proposal for Social and Local Communities development plan for the asset.
- Proposal for asset maintenance strategy

The RfP should also provide guidelines for the preparation of the financial model. The guidelines should set out the requirements for information to be included regarding the key components of the bid such as operating costs, financing structure and costs and major lifecycle maintenance costs. The financial model should allow the Relevant Authority to assess the robustness of the bidder's assumptions with respect to the project (and financing) costs and forecast revenues and allow for sensitivity analysis.

Evaluation Criteria and Methodology

Similar to the RfQ stage, evaluation criteria need to be developed prior to the release of the RfP documents.

The evaluation criteria should include a list of requirements that are considered mandatory. This will assist the Relevant Authority in determining the conformity of the submitted bids. The following aspects will be considered when evaluating proposals:

- Compliance and conformity - This involves assessment of compliance with the requirements set out in the RfP as well as the contract.
- Financial aspects - This involves an assessment of the financial proposition by each bidder and specifically from its value for money perspective. Financial evaluation should cover the following:
 - Viability of the bid proposition – an assessment of financial impacts of the bid in terms of cost to the budget, risks allocated to the Relevant Authority and validity of the underlying assumptions.
 - Certainty of financing – an assessment of the ability of the asset's cash flow generated from its operations to meet lenders' requirements. This will be a factor of the bidder's forecast of future demand for the services provided by the asset as well as the operating and maintenance costs and future capital investment required.
 - The level of the Relevant Authority support – an assessment of the value and viability of the required equity contributions from the Relevant Authority (if any).
 - The financial bids can be evaluated based on the highest bid price offered. For asset recycling projects that adopt an instalment or periodic payment, or revenue share regime with the Relevant Authority, the evaluation will consider the highest overall financial benefit to the Relevant Authority on a present value basis.
- Technical evaluation - This involves an assessment of issues pertaining to the physical infrastructure and other non-financial matters. These factors tend to be more subjective than the financial assessment. The technical proposal must be consistent with the full life cycle of the Asset and not only with the concession period.
- Service delivery - Assessment of services to be delivered vis-à-vis specifications. This includes scope, capability of the bidder to deliver the services and reliability of services delivered, including climate related risks.

Managing the Bid Process

Following the release of the RfP documentation to shortlisted bidders, preparation of final proposals commences with the pre-bid meetings.

Pre-bid Meetings

To improve clarity of the tendering process and the Relevant Authority's requirements, the Relevant Authority should provide for a clarification process with the bidders, through conduct of pre-bid meetings.

This will improve the quality of submitted proposals and will ultimately improve the financial benefit to the Relevant Authority from the tendering process. During the RfP process there are several opportunities to interact with the private sector parties, including:

- Data room access and electronic/written Q&A submission.
- Pre-bid team meetings (in person or by videocall).

The following principles should guide the Relevant Authority when communicating with bidders:

- Confidentiality of information received from bidders. It is essential to ensure that other bidders and other parties do not become privy to any information provided by the bidder.
- No unfair advantage is given to any one bidder through information revealed in the process of interaction or a response to a question. All pre-bid meetings and workshops, whether held in groups or one-on-one should be documented and all minutes, questions asked and Relevant Authority's responses, should be shared with all short-listed bidders, whether they participated in the meetings or not.

The amount of interaction depends on the scale and complexity of the project. The extent and nature of the interactive bid process will be determined on a project-by-project basis. In general, it is recommended that the Relevant Authority conducts workshops to discuss the project.

Workshops can be conducted for separate streams, including:

- Technical workshops - where the private sector and the Relevant Authority discuss issues such as overview of project assets, current condition of asset, operational and asset management issues, site conditions and supporting infrastructure.
- Financial and commercial workshops - where issues such as historical financial performance of the asset, funding, and commercial terms under the draft project agreement, etc. are discussed.

Receive and Evaluate Proposals

Proposals will be evaluated in-line with the evaluation criteria detailed in the RfP. The following steps mentioned should be followed when evaluating the proposals:

- Assess Compliance and Conformity

Once the bids have been received, the tender committee will assess their compliance with mandatory requirements (for example, lodgement time, mode of delivery, number of copies, etc.). A bid that does not conform to all requirements may be regarded as a non-conforming bid and may be disqualified.

The tender committee, subject to direction by the representatives from the Relevant Authority, may exercise discretion to judge a bid to be a complying or conforming bid, notwithstanding incidental departures from the requirements of the RfP.

The draft contract accompanying the RfP effectively conveys the Relevant Authority's position on risk allocation with respect to the project. The Relevant Authority should require that the number of variations from the contract be limited to pre-specified areas which do not affect the specified risk allocation and other material commercial matters. This allows bids to be compared on a like-for-like basis.

- Conduct Bid Clarifications

The tender committee may seek clarifications on the bid submissions.

These questions should be documented and reviewed by a representative from the Relevant Authority prior to being forwarded to the bidder. A formal meeting to discuss the responses may be appropriate and this meeting will be confined to the issues raised.

Depending on the transaction, it may be appropriate to invite bidders to make presentations. This opportunity should be extended to all bidders if provided. The presentations should take place after written proposals have been lodged to ensure that no opportunities exist for bids to be amended as a result of the discussion.

- Review by Evaluation Teams / Tender Committee

A decision should be made on the appropriate structure of the evaluation team(s) / tender committee. It is common for separate teams, comprised of members of the tender committee, to be established to assess the asset management and operations, commercial and legal (compliance) components of the bids.

For less complex projects it may be appropriate to establish only one evaluation team / tender committee which shall develop a methodology to ensure that all elements are properly assessed.

Each evaluation criteria is usually expressed as a rating against a predetermined scale, subject to mandatory requirements and eligibility criteria. The initial review is likely to identify a number of issues requiring clarifications from the bidders before a detailed evaluation can be concluded. Evaluation and clarification processes are likely to run in parallel and there might be several rounds of clarifications required.

The Tender Committee/ Evaluation Team should include an environmental and climate resilient expert.

Bid Evaluation and Award

Bid submissions will be evaluated against the following considerations:

Financial Considerations

Assessment of the financial proposition in each bid is a key component of the evaluation.

Depending on the transaction, financial considerations (highest bid or highest net financial benefit) may be the sole evaluation criteria. In this case, bids that qualify based on technical parameters are assessed individually and compared to one another.

In other cases, the financial considerations are only one element of a balanced holistic evaluation process. Non-financial aspects of a proposal are allotted certain weightage based on the specific requirements of the operational and performance aspects of the asset. Weighted scores are computed for all the bids to calculate an overall score comprising of both the financial and technical scores. The submission of a weighted technical and financial score is used to arrive at the ranking of bidders.

Where the successful bidder is to pay the Relevant Authority an upfront concession fee for the right to manage and operate the underlying asset, this amount will be the main subject of the evaluation. However, given the long-term nature of such an arrangement, it is important that the Relevant Authority reviews bidders' proposals to ensure that matters like service quality and financial sustainability can be maintained over the term of the project.

The financial model provided by bidders should be reviewed to assess the financial sustainability of the bidder's proposal. Sensitivity should be conducted to ensure minimum service standards and any future capital investments can be sustainably met over the project term.

The financial evaluation of bids requires a well-structured approach and careful consideration of the risks to the Relevant Authority. Bids can easily be misinterpreted due to risks not adequately identified which can lead to the Relevant Authority being exposed during final negotiations.

The financial evaluation process should focus on each element of the financial template (such as forecasted costs, financing structure etc.) and assess the reasonableness of each major driver. The outcome of this detailed review will enable the procurement team to have an opinion on:

- The efficiency, pricing and deliverability of the financing structure. The Relevant Authority is focused on net financial benefit; however, the providers of equity need a reasonable return to be motivated to deliver services at the standard required. Similarly, financiers need assurance of sufficient cover for any debt service. Failure to achieve this may result in a failure to fully meet service standards, cost cutting or an attempt to walk away from the project.
- The level of reliance being placed on achieving bonuses for above-standard performance or aggressive traffic/demand forecasts. It is risky for project cash flows to be heavily dependent upon upsides, which may not eventuate.
- External funding - the financing structure proposed by bidders must indicate a level of equity contribution by the members of the consortium.
- For external debt providers, the financial evaluation will be centered on the serviceability of the debt to ensure the project generates sufficient revenue to service the debt over the tenor of the debt. This would require an assessment of key ratios such as Debt Service Coverage Ratio, Loan Life Coverage Ratio.
- Taxation assumptions - the project agreement is usually drafted such that taxation risks are allocated to the private sector. However, where the project is implemented under a joint venture agreement between the private sector and the Relevant Authority, the Relevant Authority may bear some of these taxation risks, along with other risks commonly borne by the JV sponsors. The bid evaluation process will focus on the assumptions made about available tax deductions and availability of other tax concessions.

Technical Evaluation

Evaluation of issues concerned with non-financial matters are potentially more difficult to deal with than financial issues. This reflects the more subjective nature of the evaluation of areas such as service delivery and maintenance and operations of the infrastructure.

The key principle that shall be applied in evaluating the non-financial components of bids is to focus on the outputs being sought by the bid process, rather than inputs, and examine the risks to the Relevant Authority over the life of the project, rather than focusing on the short-term.

For example, the infrastructure evaluation should consider the ability of a bidder to improve the operational and financial performance of the infrastructure asset over the life of the contract and innovations and efficiencies that can be implemented to increase service quality or capacity or to provide enhancements to the asset to become a green infrastructure asset.

The bids will be reviewed against criteria such as technical capabilities, service quality innovations, approach to routine and lifecycle maintenance, and environmental considerations.

The weighting accorded to each criterion should be determined prior to the evaluation process. Bids can be analysed, differentiated, and ranked against the following:

- A realistic assessment of the bidder's proposed operations and maintenance approach to deliver on the expected standards of quality of service and the operations and maintenance costs assumed to deliver the same
- Ability of the bidder's management structure to deliver services to users to the standards required by the Relevant Authority.
- The proposed quality assurance program.

Climate Resilience, Environmental and Social Evaluation

Integrating climate resilience generally incurs an additional cost for potential bidders, both in developing their proposals and potentially in the final cost of the project. This could put them at a competitive disadvantage relative to the bidders that choose not to integrate this factor if the benefits of increased resilience are not fully considered in the procurement process. [OECD, 2017].

Bidders' proposal for the Asset should be evaluated qualitatively and quantitatively (when possible) in terms of the following aspects:

- Robustness of climate mitigation and adaptation plan and GHG emissions reductions proposed by bidder. The key issue to be assessed is whether a bidder has taken steps to understand their environmental impact and carbon footprint relevant to the delivery of the contract
- Robustness of Emergency Preparedness and Response plan (EPR plan) / Disaster Risk Management plan (DRM plan)
- Commitment to manage the asset responsibly for the environment and in a low carbon, climate resilient manner
- Integration of climate resilience in maintenance strategy proposed by bidder
- Robustness of Social and Local Communities development plan

- Alignment of the technical solution with the total life cycle of the Asset (and not only with de concession period)

Ensure that the process of evaluating tenders accounts for resilience benefits, including by considering net benefits over the life of the asset, rather than the term of the contract [OECD, 2018].

Service Delivery Evaluation

Service delivery is at the heart of the evaluation. The key questions to be answered are whether the infrastructure asset will be operated satisfactorily, remain available reliably throughout the duration of the project term and whether it will deliver services to the required specifications. The scope of service delivery will vary considerably between different assets.

Consequently, there will be a need to have, in the evaluation team (the tender committee), both experience in the particular area of service delivery and also a readiness to accept new approaches.

A **variety of techniques of evaluation** could be employed across the range of projects.

Primarily the **need is to evaluate three (3) non-financial aspects of the bids** – (a) the service that is offered; (b) the capability of an operator to deliver that service, and (c) the reliability of delivery over time. These are outlined below:

- Offer - The consideration here is whether what is offered in the bid includes the full range of operational outputs required by the Relevant Authority at the required service performance level.
- Bids concerning service delivery may offer higher levels of service delivery than those specified in the RfP or may offer enhancements. In these cases, higher levels of service delivery or enhancements can be used as a basis to distinguish between bids and its evaluation should be balanced with the financial benefit to the Relevant Authority (e.g., amount of upfront payment).
- Capability - Commonly, services will be delivered by the private sector party who is a member of a consortium formed or a contractor (who is assigned tasks of the scope of work) to carry out the project. Evaluation will focus on the experience, skills, and relevant track-record of this private sector party.
- Reliability - There is also a need to assess the level of confidence in the ability of the private sector operator to maintain the required performance standards over the term of the project. This again would be assessed based on the relevant private sector party's experience and relevant track record, including, if required based on certificates from previous clients of similar projects
- The business plan for operations and maintenance will demonstrate capacity to manage risks allocated to the private sector. Consequently, there will be evidence of scope to accommodate reasonable variations in economic conditions, labour market, competitive environment, and other areas of risk. The tender committee will look for a sound record over a number of years, together with a sound plan into the future.

Evaluation Reports

After the evaluation process is concluded, the tender committee will present the findings in an evaluation report.

The report should follow the agreed evaluation methodology and criteria outlined in the RfP. The evaluation report should provide a ranking of the bidders and recommend the preferred bidder.

If several sub-tender committee teams are involved (e.g. technical, financial etc.), the report will provide a joint view from these evaluation teams. The report will discuss rankings within each area of evaluation, the weighted average ranking and the basis of the team's agreement on the preferred bidder.

The evaluation report will focus on determining the following:

- The financial proposal of each bid; consideration of the net financial benefit to the Relevant Authority for each bid and the key drivers of differences between the bids. Any risks associated with the financing structure should be detailed, including any tax assumptions and any concerns over securing debt and equity contributions.
- The service delivery propositions of each bid, the extent to which they meet the Relevant Authority's requirements and the assessment of any enhanced service outputs or innovation proposed by the bidder. Any potential risks associated with a bidder's service delivery approach over time should be assessed.
- The capability of the bidder to deliver the services over the period of the contract.
- The flexibility of each proposal to accommodate future requirements for expansion, higher volume/usage or changes in operating protocols due to policy/demographic changes (if required and specified in the RfP).
- Any other potential risks to the Relevant Authority in entering into a contract with each party.

Rank Bidders

Based on the evaluation reports, the bidders should be ranked, and a single preferred bidder should be identified. The ranking should be made in accordance with the evaluation criteria described in the RfP document and should be prepared in a format that promotes transparency in the bidding process. Moreover, if any aspects of the bid submission were technically non-compliant with the RfP, the ranking documentation should note the non-compliance and whether the non-compliance was being waived as immaterial.

Contents of the ranking documentation should ordinarily include the numerical point scores and any qualitative comments for each evaluation category. Raw numerical point scores should be presented before any weighting or adjustment in accordance with the evaluation procedure, and any weighting should be made in the manner agreed as part of the evaluation methodology. Criteria and/or methodology should not be altered at this stage, as doing so can suggest bias in favour of one bidder.

The ranking and score of the bidders should be publicly announced. The background documentation and evaluation reports should be kept confidential in the first instance but should be retained in the event that the tender results are challenged and/or the process is subject to third party evaluation or investigation.

Select Preferred Bidder

Following the evaluation report, the **finalization of the selection** of the preferred bidder will commence.

If a single bidder cannot be identified after evaluation, the Relevant Authority should consider shortlisting the top two ranking bidders and undertaking a structured negotiation/optimisation process, where a greater level of interaction is required, to address the outstanding issues.

Contract Finalisation

Final Negotiations

With the preferred bidder identified, the final negotiation process will commence. The tender committee should take on the role of the negotiation team, with additional support from the Relevant Authority and its advisors (if required), at this point of the process.

Key steps in setting up negotiation framework are set out below:

- **Develop a negotiation strategy** – To negotiate effectively, it is important for the negotiation team, in consultation with its transaction advisors, to anticipate the preferred bidders' interests and anticipate any contentious issues. The negotiation team should develop a negotiation plan which considers the predefined positions of the Relevant Authority and set minimum negotiating parameters.
- **Define negotiation issues** - Issues to be negotiated should be clearly set out, together with the Relevant Authority's position on each of them. The issues that the preferred bidder seeks to negotiate should be confined to departures (if any) from the contract provided with the RfP and reflected in the bid. The representatives from the Relevant Authority should not introduce any new issues into negotiations (i.e., issues not raised previously in bids) and the parties will agree not to re-open issues already agreed.
- **Documentation** - All matters agreed upon during the negotiations will be recorded in meeting notes and agreed at the end of each meeting. This reduces the risk of issues being revisited and provides clear instructions for the finalization of the contract. The parties should:
 - Agree on timetable for negotiation. This is important to prevent delays and ensure the overall timeline for the transaction is adhered to.
 - Agree on the dispute resolution process. An agreed process for overcoming any impasse in negotiations involves seeking resolution from senior management. The parties need to ensure that the appropriate decision makers are accessible throughout the negotiations.
 - Appoint members with authority to commit. Both negotiation teams need to appoint members with the authority to make decisions on behalf of their organizations.

After the negotiation framework has been developed, a formal written communication inviting the preferred bidder for negotiations should be sent. This communication will include administrative

details such as date, time, venue and expected duration of negotiations. It will provide the bidder with key points of discussion, objectives of discussion, the approach proposed by the Relevant Authority and any additional information required by the Relevant Authority.

The formal settlement between the two parties will happen subsequent to them reaching a compromise wherein both parties believe that the settlement is the best possible outcome under the circumstances.

Contract Signing

Once the procurement process is complete, the contract will be awarded to the successful bidder. A suitable date and venue are nominated for contract execution, where the Relevant Authority signs the contracts with the preferred bidder having incorporated a Special Purpose Vehicle for the project.

A public announcement of the contract and the successful bidder will be made, in ways that conform to the Relevant Authority's policy and procedures.

Towards Financial Close

Financial close typically will coincide with the legally binding commitments of equity holders and debt financiers to provide or mobilize funding for the transaction. Financial close, in most cases, indicates the commencement of the project period.

Adequate time should be given for financial close. In case of delays in financial close, there should be appropriate penalties defined in the contract. The Relevant Authority and its advisors may be called upon to support the process of achieving financial close, particularly in addressing some concerns of potential lenders to the project. This support may take the form of providing additional information / data / documents or participating in some meetings with potential lenders and responding to some of their queries / concerns.

There may be specific government approvals such as the approvals of licenses or granting permits that may need to be resolved before financial close.

It is important that the number of such matters outstanding at contract execution is kept to an absolute minimum to prevent unacceptable delay between contract execution and financial close.

Box 8: Case Study on Sample Transaction Documents of TOT Model

Case Study: Sample Transaction Documents, TOT Model, India

The National Highways Authority of India (NHAI) has adopted a single stage two-part system for selection of the bidder for award of the projects under TOT model.

Under this process, bids are invited under two parts. The eligibility and qualifications of the Bidder is first assessed based on details submitted in their technical bids based on criteria prescribed in the request for proposal (RFP). The financial bid is to be opened only for bidders that qualify after assessing their technical bids.

The transaction and tender documents are made available in the public domain in case of TOT model of highway monetization in India, which provides a high degree of transparency for participants of future TOT tenders.

Documentation	Source
Request for Proposal	https://morth.nic.in/sites/default/files/RFP-tot.pdf
Model Concession Agreement	https://morth.nic.in/sites/default/files/tot.pdf
Modifications to Concession Agreement	https://morth.nic.in/sites/default/files/Circular-on-ToT-13-12-2019.pdf
Investor Presentation	https://www.indiainnewyork.gov.in/pdf/press/TOT-Bundle-II-Investor-Presentation-with-investor-1.0.pdf

Financing Options and Instruments

Financing Options and Instruments

This section presents different modes of financing an asset recycling finance. Private sector participants in an asset recycling transaction will be required to fund the upfront payment to secure the concession or lease. The private sector may also be required to fund any required capital expenditure to refurbish or re-develop the asset. This section discusses the financing options and instruments available to the private sector and provides the relevant Authority with an understanding of the criteria issues to ensure the bankability of any proposed asset recycling scheme.

Traditionally, public sources have been the main source of capital available for finance, including financial resources from multilateral development banks (MDBs), multilateral organizations, governments, infrastructure funds and aid agencies. However, the cost of mitigating and adapting to climate change increasingly outweighs the amount of public funds available, thus there is a global need to increase and capitalize funds from the private sector and private sources such as commercial financial institutions, philanthropic organizations, institutional investors, non-profit organizations, corporate actors, institutional funds, etc.

This finance gap has led to the introduction of blended finance, where public and private sources contribute to a single funding flow, helping to reduce investment risks for the private sector. The blended-finance refers to the targeted use of alternative financing for high-impact projects (i.e., large infrastructure projects) where actual or perceived risks are too high for commercial lenders to enter on their own. While the search and preparation costs associated with accessing this means of financing may not always make it economically feasible, especially for small projects, as a rule, for larger projects it is worth exploring options to apply for this type of funding.

There are different typologies of financial instruments which generally fall under four (4) main categories: i) debt instruments; ii) equity instruments; iii) credit enhancement instruments; and iv) risk transfer instruments.

Types of Financing Instruments

The selection of the adequate instrument and/ or finance provider will depend on the type of asset recycling project as well as the type of concessionaire/ private partner selected. In the following table, a list of different types of instruments per category are presented:

Table 8: Types of Financing Instruments

Documentation		Definition	Finance Provider
Debt Instruments	Non-concessional loans	Sum of money that is given but needs to be repaid.	Commercial banks, corporates
	Concessional loans	Sum of money that is given at a relative cheaper cost.	Governments, multilateral/bilateral finance institutions, infrastructure funds

	Grants	Sum of money that is given but does not need to be repaid.	Public and private investors, MDBs
	Debt swaps	Sale of a foreign currency debt to an investor or debt forgiveness by the creditor, in exchange for the debt relief.	Public and private investors
	Green, social, thematic and sustainability linked bonds	Debt instruments where proceeds are used to finance or refinance, in part or in full, new and/or existing eligible projects/assets/companies.	Public (national, sub-national or municipal) and private investors, banks or corporations
	Quasi equity	Debt, typically unsecured and subordinated that raises capital base with no changes to the ownership structure	Public and private investors
Equity Instruments	Equity securities	Ownership interest held by shareholders in an entity (a company, partnership, or trust), realized in the form of shares of capital stock	Public and private investors
	Investment grants	Sum of money that does not need to be repaid.	Governments, multilateral/bilateral finance institutions
	Co-financing	Joint financing between two entities working to finance an activity	Public and private investors
Credit-enhancement instruments	Interest-rate softening mechanisms	Lower interest rates and other costs below the market rates	Governments, multilateral/bilateral finance institutions
	On-lending/ re-financing	Borrowing from external or domestic sources and thereafter pass the loan to another entity/ replacement of an existing debt obligation with another debt obligation under different terms	Development/ institutional finance institutions
	Project bond credit enhancement	Subordinated instrument, either a loan or contingent facility, to support senior project bonds issued by a project company.	Multi-lateral/ bi-lateral finance institutions
	Subordination of credit trenching excess spread, over collateralization, reserve accounts, etc.	Prioritization of collateralized debts, ranking one behind another for purposes of collecting repayment from a debtor. Subordinated debts are riskier than higher priority loans, transferring risk in the event the results of projects are not fully achieved.	Local and national governments
Risk-transfer instruments	Insurances	The creation of risk transfer mechanisms that provide resources for disasters and transfer loss liabilities to capital market investors.	Insurance companies

	Guarantees	A promise to repay the debt of another in the event of default	Governments, multilateral/bilateral finance institutions
	Results-based climate finance	Funds are disbursed by the donor or investor after pre-agreed results of the activity are achieved and verified.	Governments, multilateral/bilateral finance institutions
	Blended finance	Development capital as part of the effort to mobilize private capital.	Governments, multilateral/bilateral finance institutions
	Technical assistance grants	Sum of money that is given for capacity building and information and expertise, instruction, training and consultation related to a climate activity but does not need to be repaid.	Governments, multilateral/bilateral finance institutions
	Risk capital	Funds (equity/concessional loans) allocated to climate mitigation/adaptation activity with high level of uncertainty	Governments, multilateral/bilateral finance institutions

Instruments that can reduce debt vulnerability risks while facilitating long-term investments would allow private sector to consistently take long-term risks into account.

Alternative Financing and Funding Mechanisms

Beyond financial instruments and policy tools to mobilize traditional finance, there are alternative financial mechanisms that can be deployed to facilitate asset recycling transactions.

Climate Finance

Climate finance can play a central role in enabling sustainable transitions to a low-carbon, climate resilient future and asset recycling transactions may benefit from this alternative source of financing. The detailed write-up on the innovative financing is presented in [Module 8](#) and provides key guidance for both public sector project owners (in charge of structuring and tendering the asset recycling transaction) and the private sector (selected private investors or Concessionaire) for mobilizing climate finance.

Box 9: Case Study on Innovative Financing in Peru

Case Study: Innovative Financing (Green Bond), Peru

Project Title: 500 kV Mantaro-Nueva Yanango-Carapongo Interconnection and Associated Substations

Sector: Renewable energy – Transmission

Issuer: ISA CTM - Consorcio Transmantaro S.A. (Non-Financial Corporate)

Invested amount: USD 164.4M (no refinancing); 58% Co-financing

Project Description: The project allows the reinforcement of the transmission system in the central zone of the country, as well as the evacuation of surplus generation from the Mantaro zone towards Lima, foreseen in the new generation projects that will start operations in that area.

The project company signed the concession contract with the Peruvian State on September 19, 2017. The contract expires after 30 years from the date the service becomes operational.

Thanks to the abundant water resources, the central zone of Peru is a large nucleus of hydroelectric generation. To the emblematic complex of the Mantaro, the construction of two important projects, the Cerro del Águila Power Plant and the Chaglla Power Plant, have been added in recent years; the joint generation is around 2,000 MW. The YANACOYA projects will contribute to the efficient transport of the large amount of energy coming from these two plants.

These projects are integrated with each other and will allow to meet (through the National Interconnected Electric System) the expected increase in the demand for electric power, as well as the strengthening of the electric transmission capacity in the central zone of Peru and Lima in a timely manner and with quality.

Use of proceeds: The net proceeds of the green financing instruments will be exclusively used to finance and/ or refinance eligible green projects in three main categories:

- **Renewable Energy:** Investments in the installation of electricity transmission lines that facilitate increased development and connection of renewable electricity generation sources
- **Energy Efficiency:** Investments related to energy efficiency improvements to transmission infrastructure
- **Energy efficiency:** Investments into energy storage systems

Impact: Increase in the injection or reliability of green energies & reduction of non-green energies

Islamic Finance

In asset recycling transactions, public infrastructure assets are monetized with the proceeds invested in greenfield infrastructure assets. Islamic finance is an asset-based and risk-sharing financing technique. Given this common feature, Islamic finance appears to be a natural fit for assets recycling transactions.

Unlike loan based conventional financing techniques, Islamic finance is asset based and generally involves: (a) an equity-based / sharing-based structure, e.g., musharakah (partnership) and mudarabah (partnership in profit); (b) a sale based structure, e.g., murabahah (sale with profit), istisna'a (build / manufacture) and salam (advance purchase); (c) a lease-based structure, e.g., ijarah (leasing); or (d) a fee-based structure, e.g., wakalah (agency), kafalah (guarantee) and ju'alah (service contract).

An asset recycling transaction involves the transfer of control of an asset for financial consideration, Islamic financing techniques that can facilitate assets recycling transactions includes lease (ijarah) based structures such as: (a) sale and leaseback, (b) long-term lease and short-term lease (head lease and sub-lease); and (c) asset-backed *sukuk al-ijarah*.

The detailed write-up on the innovative financing is presented in [Module 9](#).

Contract Management

Asset recycling transactions involving a long-term concession or lease of an asset to a private partner constitute a long-term commitment by the private sector to operate and maintain, and sometimes redevelop and/or expand, a Relevant Authority's existing infrastructure project to deliver services to the public or the Relevant Authority. These activities are governed by the project agreements.

As a result, effective delivery of the transaction hinges on the ability of both the Relevant Authority and the private sector party to execute their responsibilities, as outlined in the project agreements. Even if a contract is drafted in accordance with international best practice and industry standards, the parties' objectives may not be achieved if the contract is not underpinned by effective contract management and performance monitoring over the life of the project.

This calls for an effective approach for managing the project agreements / contracts at every stage of the project term.

Contract Management Overview

Contract management defines the processes and procedures which the contracting parties follow in order to:

- meet their respective obligations;
- demonstrate their compliance with these obligations to their counterparts; and
- monitor the compliance of their counterparts with the counterparts' obligations.

Collectively, these efforts are intended to ensure that the contracting parties work towards the project objectives. Effective contract management ensures that the users of the project (the general public, customers, riders or, in some cases, the Relevant Authority itself) continue to obtain the services set out in the output specification of the project agreement. The contract management process should also set out relevant measures that can be used to monitor the risk profile of the project.

This section details the guidelines for effective contract management, which will identify, monitor and manage all risks over the life of the contract to assist in achieving project objectives.

For those projects deemed to have medium to high-climate related risks it is wise to include climate change / climate resilience expertise as part of the contract management team.

Understand the stakeholders and the contracts

Prior to the contract management strategy being developed, the Relevant Authority should confirm an overall understanding of:

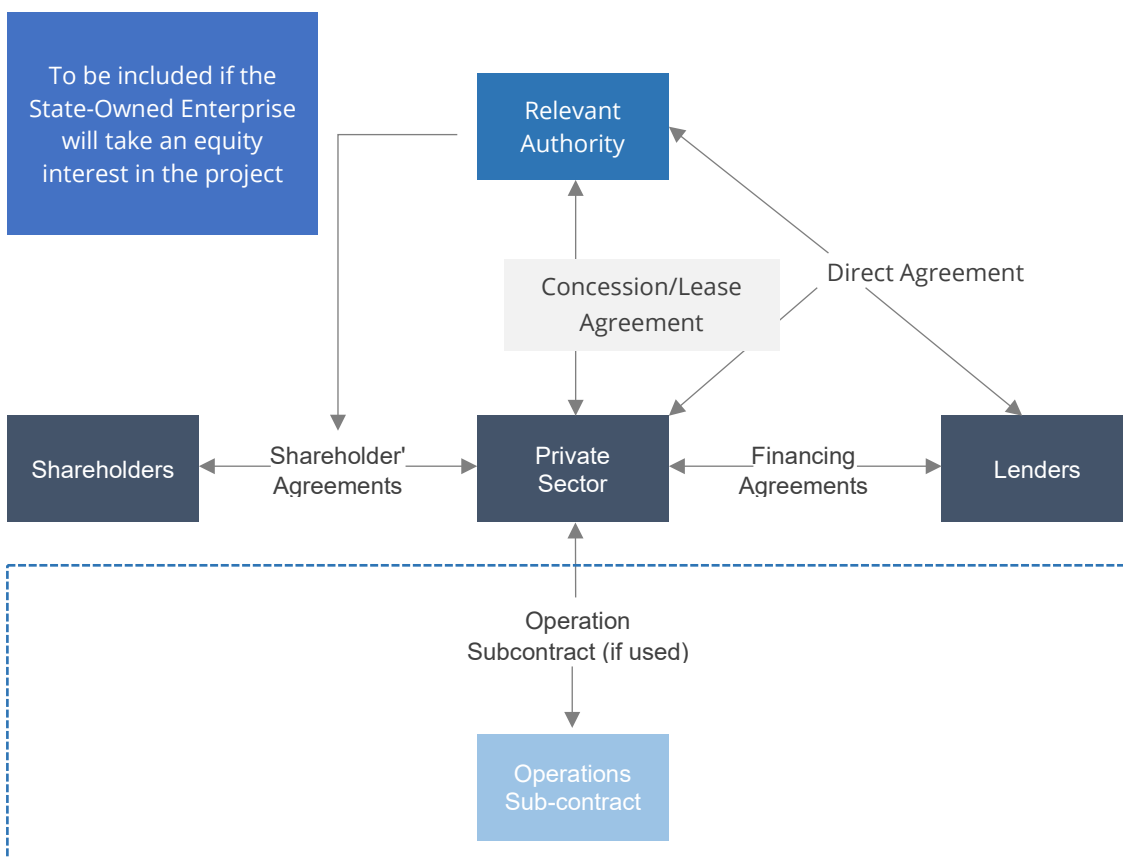
- The various stakeholders in the project agreements: the stakeholders include direct parties to the agreements as well as other parties (such as other government bodies and the local community) that have an interest in the project and the parties' performance of their respective duties and obligations.

- The express terms of the project agreements: the terms outline the powers, obligations, and responsibilities of the parties to the contract. The understanding of the relationships between all parties is vital as each party may have conflicting goals that may not necessarily align to achieving the project objectives.

While the Relevant Authority must adopt an approach that is in line with applicable regulations and guidelines; there is no generic 'one size fits all' approach. Rather, the contract management approach must be developed for each specific project, in a manner consistent with project's specific characteristics and requirements.

For reference, the typical parties to a concession or lease agreement are shown in the diagram below.

Figure 7: Stakeholders in a Concession / Lease Agreement



The Private Sector may enter into an operations sub-contract under which it subcontracts its obligation to operate and maintain the asset to an operator. The operator either performs the maintenance activities itself, if it has the capability to do so, or it subcontracts these activities to the rolling stock and systems supplier.

The Direct Agreement is a tripartite agreement between the Relevant Authority, the private sector participant, and the lenders. It provides the lenders with some right to take over the project where the private sector participant has failed to fulfil its obligations under the concession or lease agreement. This can include in circumstances of insolvency as well as other serious breaches. It allows the lenders to 'step-in' and assume the role of the private sector participant to give it the opportunity to rectify the breaches to avoid termination of concession or lease.

As detailed under legal and commercial structuring options, there are potential variations from the basic structure illustrated above. These may include:

- Inclusion of ancillary agreements with subsidiaries and affiliates of the Relevant Authority.
- Use of a shareholders/ joint venture agreement as the primary agreement between the Relevant Authority and the private sector in case the transaction is structured as a joint venture.

Establish the contract management team

Under the project agreement, the private sector is contractually bound to deliver the required services in accordance with the standards defined in the contract. An effective contract management process is aimed at ensuring that the private sector delivers to the standards defined in the contract.

The Relevant Authority should establish a contract management team to monitor operations under the project agreements and undertake regular reviews and performance monitoring to ensure compliance with the agreements. The contract management team should consist of experienced personnel with relevant skill set to manage these contracts.

Team members should consist of a range of specialists and technical advisors, if required. The contract management team's initial role after contracts have been signed will be supervising the handover of the asset from the Relevant Authority to private sector in accordance with the contract terms.

After that, the team's focus should be on ensuring management and operations of the asset (i.e., the availability of asset to users and delivery of the services) to the required standards. If the project scope includes significant capital expenditure, during these activities the contract management team may need to also monitor quality and timelines. However, it should be noted that as revenue risk falls mostly to the private sector, this should be done on a light touch basis. At the end of the contract period, the focus will shift to the handover of the asset from the private sector to the Relevant Authority.

The overall size and complexity of the project would be the key variable in determining the size and skill set required by the contract management team. The size and composition of the contract management team may evolve through the project lifecycle.

An overview of the types of skills required include:

- Business and product assurance
- Facilities and services management
- Statutory safety and regulatory responsibilities
- Asset management and maintenance
- Legal and regulatory; and
- Finance

Identify contract management team responsibilities

The contract management team should be headed by a project manager. The project manager should be an employee of the Relevant Authority, not an external advisor, and should have sufficient authority to carry out the role effectively.

The key responsibilities of the contract management team should include:

- Developing and implementing the contract management plan.
- Ensuring that both parties meet their contractual obligations and ensuring performance specifications are achieved.
- Monitoring private sector performance and enforcing remediation steps where necessary.
- Administering institutional obligations and protect institutional rights in the contract.
- Managing risks and preventing and/or resolving disputes; and
- Managing approved changes/variations.

Develop the Contract Management Plan

The contract management plan should include the following:

- Describe required tools and processes – The contract management team should identify the necessary tools and processes needed to manage the contract during the lifecycle of the transaction (e.g., monitoring of performance standards). These tools and processes should be comprehensive and outline measures to identify potential risks. Consideration should be given to both the types of performance standards, the frequency of reporting and remediation steps if there is deficiency in performance. The tools and process must align with the project's performance monitoring approach as described in subsequent sections.
- Assess resource availability – Relevant resources to administer the contract management framework should be specified. Staff with the requisite expertise should be appointed at the Relevant Authority to be involved in the contract management process. This should be supported by financial resources (i.e., budget related to contract management) and technological resources (i.e., systems and software for monitoring the contract performance).
- Timeline for the development of tools and processes - The contract management plan should contain the timeline needed to develop and implement these tools and resources.

Environmental considerations for Contract Management Plan and Operation:

- Climate Risks Mitigation and Adaptation Plan for the whole concession period, that should be approved by the corresponding Relevant Authority, which is required to be updated.
- Review and approval, of an Emergency Preparedness and Response (ERP) plan
- Maintenance plan that addresses climate risks
- Renewable energy, waste and water management commitments
- Bonds-related financing schemes for investments within concession scope must be green / social / sustainable labeled according to the ICMA principles.

Gender Equality considerations for Contract Management Plan and Operation:

- Minimum commitment to gender equality in the total workforce

- Minimum commitment to gender equality in top management
- Gender Salary equality for similar positions
- Appropriate maternity/ paternity schemes

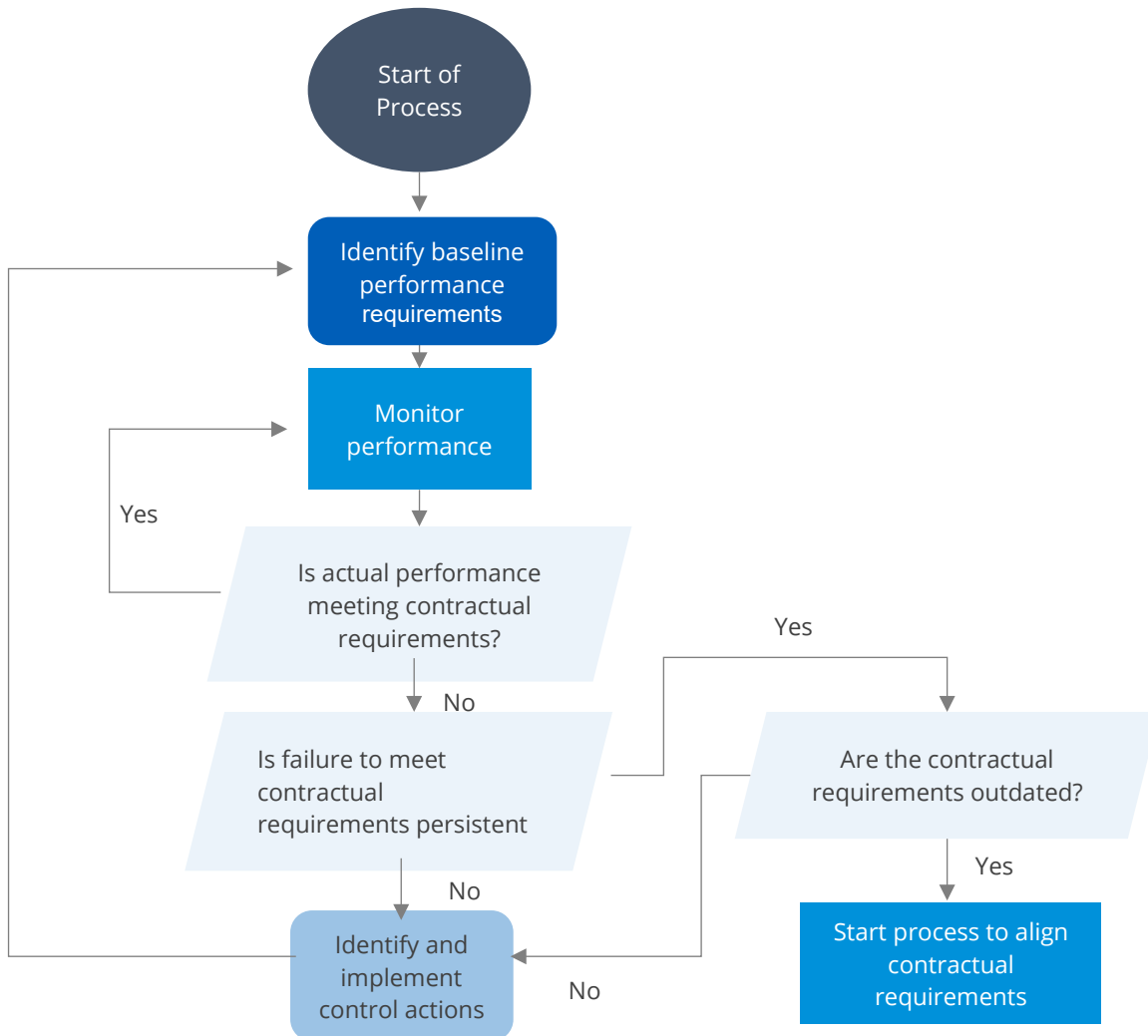
Monitoring and reporting strategy

An effective performance monitoring and reporting strategy has to incorporate the following elements:

- Understanding of the business environment and the objectives of the project contract – Definition of various performance measures hinges upon a solid understanding of the various elements contained within the project agreement.
- Understanding the private sector’s internal operating environment and management team – the Relevant Authority should ensure that it understands the business and cash flow model of the private partner’s business model.
- Timely quality measurement – the Relevant Authority should proactively and regularly monitor and measure the quality of service against predetermined KPIs and output specifications.
- Understanding all obligations of the Relevant Authority (if any) and the timelines for delivering on the same
- Reporting the outcome of performance monitoring regularly. While the frequency of such reports would depend on the project, but typically, such reports should be prepared and shared with all stakeholders at least on a monthly or quarterly basis.
- Concession agreement should include obligations for environmental management, monitoring, and reporting to Relevant Authority that owns the asset, as well as required biannual reporting to local environmental agency on environmental instrument implementation (AMDAL/ RKL/ RPL or UKL-UPL).
- Annual sustainability report

Performance monitoring process

Figure 8: Performance Monitoring Process



The contract management team should develop a process to monitor performance. An illustration of a typical process for doing so is contained in the diagram above.

If the failure to meet contractual requirements is persistent over time, the Relevant Authority should seek to understand the cause of this. If the failure is due to a contractual requirement becoming inappropriate over time, the contractual variations process should be activated. The contract variation process involves modifying the contractual requirements to align with the then current appropriate standards.

Performance monitoring should be carried out periodically. This can be carried out in the form of either reports or meetings, examination of financial data and inspections. The Relevant Authority will also reserve the right to carry out audits or surprise spot checks.

Penalties for non-delivery

In addition to the payment mechanism employed in the project contract when the private sector is fully performing its obligations, the contract will also stipulate financial penalties and consequences for non-delivery of contractual services or standards. Such penalties are intended to incentivise the private sector to deliver outputs or services according to contractual standards. However, usually prior to activating such penalties, the Contract Management team would identify the lapses or shortfalls in service delivery, inform the private sector of the same and provide a certain rectification period within which the private party is expected to address these deficiencies.

Hand-back procedure

At the end of the concession or lease term, there should be a set of obligations that both the private sector and the Relevant Authority have to fulfil. The contract management team needs to monitor the private sector's compliance with the exit obligations under the transaction contract.

The contract management team should manage the handover of relevant documents and records. Further at this stage, the contract management team should plan for the continuity of service delivery and maintenance of service standards.

The project contract should include well-defined performance standards for the asset at the time of handover. In case of sub-optimal asset quality at handover, procedures should be defined to determine the assessment of actual quality and the rectification cost payable. This may involve an independent process to conduct handover checks.

Dispute resolution

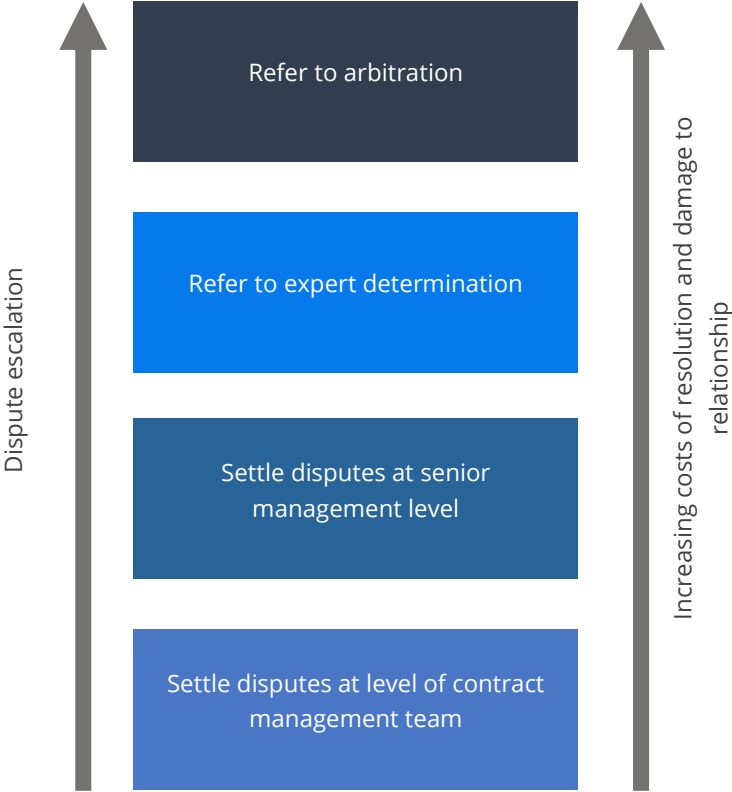
The Relevant Authority's contract management team should build agreed mechanisms for settling disputes into the contracts. A proper dispute resolution framework will lead to a quicker resolution of issues. There are a number of existing dispute resolution approaches which may be included in the project's dispute resolution framework:

- Discussion between both parties, including escalation to senior management of both parties
- Expert determination
- Mediation or conciliation; and
- Arbitration or courts.

It should be ensured that relevant disputes resolution clauses are incorporated within the project contract. The precise drafting of the dispute resolution clauses should be the responsibility of the legal advisor.

Typically, adjudication by an arbitral forum or courts of law will be considered as the last resort. An illustration of the way a dispute can be escalated under a dispute resolution clause is presented below. The details of any escalation process will depend on the details contained in the precise clause governing the contract.

Figure 9: Escalation Process of Dispute Resolution



Utilization of Proceeds

Options For Utilization Proceeds

The government entities may consider the following for utilization of proceeds from asset recycling:

- Re-investment of proceeds in greenfield assets.
- Re-payment of existing debt relating to the asset that is the subject of the asset recycling transaction (this would usually be a pre-condition of the lenders, unless the current lenders agree to continue their exposure to the project even after the private party takes over operations and maintenance of the project).
- Meeting operational expenditure for existing assets; and
- Provide financial support for technical assistance for future projects.

Considerations in utilization of proceeds

There are several considerations for utilization of proceeds from asset recycling:

- A good practice for government could be to specify the application of the proceeds raised from implementing an asset recycling program. This should include providing clarity as to the intended investment program for new infrastructure asset to be developed as well as the amount that is to be re-invested. This will help in:
 - Defining priority assets.
 - Provide visibility in meeting the funding gap for new infrastructure assets.
 - Ensure transparency and accountability in the application of sales proceeds; and
 - Assess objectively and retrospectively the success of the program, and accordingly calibrate the implementation of the asset recycling program.
- Re-investment within the Relevant Authority's purview: The Relevant Authority may intend to retain the proceeds from asset recycling for re-investment in new/greenfield assets which are within the purview of the Relevant Authority. This mechanism incentivizes Relevant Authority to recycle assets to unlock capital.
- Allocation of proceeds to a separate fund: The proceeds from asset recycling can be allocated to a fund that is separate and distinct from the Relevant Authority's balance sheet. The application of the fund should be transparently specified so that the public can be assured of long-term value creation through the re-investment of the proceeds in infrastructure assets. In some jurisdictions, this approach is used to de-politicize the monetization and application of the proceeds through asset recycling programs by enhancing accountability and transparency.
- Add to the strategic criteria for determining the use of proceeds:
 - Conforms to the Long-Term Strategy for Low Carbon and Climate Resilience 2050 and net zero pledges and the country's Nationally Determined Contribution (NDC).

Box 10: Case Study on the Utilization of Proceeds from Asset Recycling

Case Study: Utilization of proceeds of asset recycling by various jurisdictions

A range of options for utilization of proceeds from asset recycling, being practiced by various countries is presented below.

Countries	Sectors	Asset Recycling Model	Utilization of Proceeds
Australia	Ports, Energy, Roads, Land Registry	Sale and/ or long-term lease of assets	<ul style="list-style-type: none"> • Alleviate constraints for the funding of additional infrastructure • Re-investment of proceeds in greenfield assets • Re-payment of existing debts
India	Highways	Toll-operate-transfer (TOT), InvIT, Securitisation for brownfield highway assets	<ul style="list-style-type: none"> • Re-investment of proceeds in greenfield assets and re-payment of existing debt
Brazil	Airports, rail and roads (predominantly airports)	Operations and Maintenance Concessions	<ul style="list-style-type: none"> • Alleviate constraints for the funding of additional infrastructure • Re-investment of proceeds in greenfield assets
Mexico	Highways and toll roads	Sale/ securitization through National Infrastructure Fund	<ul style="list-style-type: none"> • Provide financial support for technical assistance for projects across multiple sectors.
Turkey	Predominantly Airports	Lease and/or transfer of operating rights (TOR) model	<ul style="list-style-type: none"> • Re-investment of proceeds in greenfield assets

